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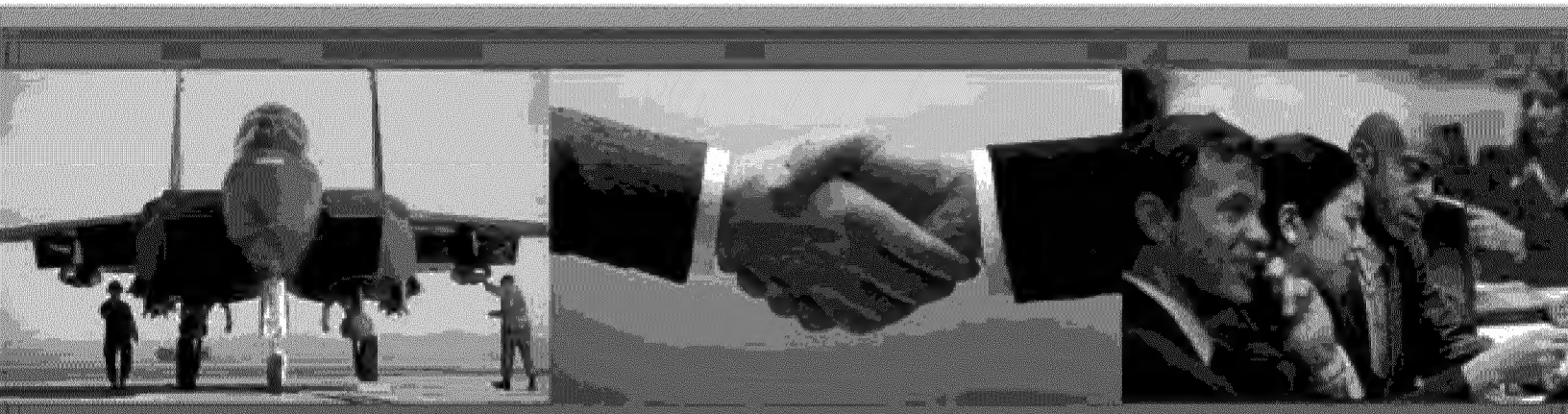
Commercial Activities Panel

Improving the Sourcing Decisions of the Government

Final Report



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Abstract
Section 832 of the Floyd D. Spence National Defense Authorization Act of 2001 (the Act) required that I, as Comptroller General of the United States, "convene a panel of experts to study the policies and procedures governing the transfer of commercial activities for the Federal Government from Government personnel to a Federal contractor . . . ." In accordance with the Act, I am pleased to transmit to Congress the report of the Commercial Activities Panel (the Panel) convened to satisfy this statutory requirement. Given the importance of this issue, I elected to chair this Panel and ensured that it was comprised of highly qualified and empowered representatives from the groups specified in the Act and other knowledgeable individuals. A diverse group of high-level members were selected as panelists in order to broaden the scope and enhance the quality of our deliberations, while increasing our chances of success.

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Commercial Activities Panel

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Commercial Activities Panel

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Chairman

April 30, 2002

The President of the Senate
The Speaker of the House of Representatives

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Given the importance of this issue, I elected to chair this Panel and ensured that it was comprised of highly qualified and empowered representatives from the groups specified in the Act and other knowledgeable individuals. A diverse group of high-level members were selected as panelists in order to broaden the scope and enhance the quality of our deliberations, while increasing our chances of success.

The Panel held a total of 11 meetings over the period of May 2001 to March 2002, including three public hearings in Washington, D.C., Indianapolis, Indiana, and San Antonio, Texas. In these hearings, Panelists heard first-hand both about the current process, primarily the cost comparison process conducted under Office of Management and Budget (OMB) Circular A-76, as well as alternatives to that process. Panel staff conducted an extensive amount of additional research, review, and analysis in order to supplement and evaluate the public testimony.

Early in its review, the Panel adopted as its mission to:

Improve the current sourcing framework and processes so that they reflect a balance among taxpayer interests, government needs, employee rights, and contractor concerns.

Recognizing that our mission was a challenging, complex, and controversial one, the Panel agreed that a supermajority of two-thirds of the Panel members would have to vote for a finding or proposal in order for it to be adopted by the Panel.

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In addition, the Panel agreed that all Panel members would have an opportunity to make a brief written statement on the Panel's recommendations and report, if they so desired. Every Panel member chose to include such a statement as part of this report.

All Panel members took their responsibilities seriously, considered the differing perspectives of their colleagues, and carefully evaluated the facts and issues presented during Panel meetings and hearings. I commend the willingness and sincere efforts undertaken by all Panel members to hear, understand, and analyze the perspective of their colleagues and to focus more on forward-looking solutions rather than dwelling on past conflicts. As a result, each made meaningful contributions in a good faith effort to make recommendations that would significantly improve the current competitive sourcing system. During our deliberations, it became apparent that more agreement rather than disagreement existed. These common understandings allowed the Panel to adopt unanimously a set of 10 principles to guide all administrative and legislative actions in this area. The Panel itself used these principles to assess the government's existing sourcing system and to develop additional Panel recommendations.

After much discussion and debate, a supermajority of the Panel members voted for an additional set of recommendations that they believe will improve significantly the government's policies and procedures for making sourcing decisions. In addition, several of the Panel members who did not vote for the entire set of additional recommendations noted in their oral comments and/or written statements that they supported one or more of them.

The Panel members recognize that this report is the end of one process and the beginning of another. The detail provided in the Panel report, and the record of its good faith agreements, disagreements, and other deliberations, will provide much useful information to the Congress and the Administration when determining what actions should be taken to accomplish our shared goal of improving current competitive sourcing processes in a balanced and effective manner.

Finally, I would like to thank my fellow Panel members, their staffs, and the many GAO staff who contributed to this effort, as well as Sean O'Keefe, who served as the OMB representative on the Panel until his appointment as the Administrator of NASA in December 2001. Special thanks go to Bill Woods, who served as project director for the Panel. The past and prospective efforts of all these individuals will contribute meaningfully to the coming public debate on this important issue.

David M. Walker
Comptroller General
of the United States

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Section I

Executive Summary

Introduction

The federal government is one of the world's largest users of services. Because of the large dollar value and the number of private and public sector jobs involved, deciding whether the public or the private sector would be the most appropriate provider of the services the government needs is an important, and often highly charged, question. These sourcing decisions are frequently controversial, both when the government decides to outsource work to the private sector directly, and when it makes a sourcing decision by comparing the costs of public- versus private-sector performance of the work.

In order to address the many and complex challenges it faces, the federal government must be able to attract and rely on employees and contractors that are highly skilled, high-performing, and competitive.

In particular, the execution of public-private cost comparison studies conducted under rules set out in the Office of Management and Budget (OMB) Circular A-76 and its Supplemental Handbook has been under fire from all sides. Federal managers and others have been concerned about the organizational turbulence that typically follows the announcement of A-76 studies. Government workers have been concerned about the impact of competition on their jobs, the opportunity for input into the process, and the lack of parity with industry offerors to protest A-76 decisions. Industry representatives have complained about unfairness in the process and the lack of a level playing field between the government and the private sector in accounting for costs. Concerns also have been raised about the adequacy of oversight of subsequent performance, whether by the public or private sector.

The government's goal is and always should be to obtain high-quality services at a reasonable cost. Stated differently, the government should strive to achieve outcomes that represent the best deal for the taxpayer. Achieving this goal is a significant challenge. But there can be little doubt that identifying the right processes that will lead to results consistent with this goal is critical.

Today, the federal government faces a number of significant and evolving challenges, some of which are directly related to its ability to achieve this goal. The public rightfully expects that the government will obtain and deliver high-quality services. Many federal agencies face serious management and personnel challenges, especially as the workforce ages and heads towards retirement. For example, in the acquisition area, the workforce has been downsized significantly in recent years, and some of those who remain have not been trained sufficiently to perform their functions in an increasingly complex environment. Similarly, the government faces continued and significant management, human resource, and professional development challenges, which affect the government's ability to manage the cost, schedule, and performance of in-house and contracted activities.

In order to address the many and complex challenges it faces, the federal government must be able to attract and rely on employees and contractors that are highly skilled, high-performing, and competitive. But in many cases, the processes designed

to help identify the best sources to deliver services have proved difficult for agencies to implement. The government continues to be saddled with systems, budgeting practices, and processes that do not adequately account for total costs and inhibit the government's ability to manage its activities in the most effective manner possible. For many agencies, choosing the most effective source for services in support of their missions has become increasingly problematic.

The Commercial Activities Panel

Against this backdrop, and in response to a requirement in the National Defense Authorization Act for Fiscal Year 2001, the Comptroller General of the United States convened a panel of experts to study the current process used by the government to make sourcing decisions. The Commercial Activities Panel (the Panel) consisted of representatives from agencies, federal labor unions, and private industry, as well as other individuals with expertise in this area. Early in its review, the Panel adopted the following mission statement:

Mission of the Commercial Activities Panel

The mission of the Commercial Activities Panel is to improve the current sourcing framework and processes so that they reflect a balance among taxpayer interests, government needs, employee rights, and contractor concerns.

The Panel decided that all of its findings and recommendations would require the agreement of at least a two-thirds supermajority of the Panel in order to be adopted. The Panel also decided that each Panel member would have the option of having a brief statement included in the report explaining the member's position on the matters considered by the Panel.

During its year-long study, the Panel heard from a variety of sources. The Panel held three public hearings to hear first-hand both about the current process, primarily the cost comparison process conducted under OMB Circular A-76, as well as alternatives to that process. The Panel also reviewed existing literature on sourcing issues faced by governments as well as by commercial firms. In the private sector, outsourcing has grown dramatically and been used primarily for what are seen as non-core services, such as information technology, and is typically integrated with a firm's strategic vision. For the federal government, however, determining the appropriate sourcing strategy has been a challenge.

The Panel heard repeatedly about the importance of competition and its central role in fostering economy, efficiency, high performance, and continuous performance improvement. The means by which the government utilizes competition for sourcing its commercial functions was at the center of the Panel's discussions and work. The Panel strongly supports continued emphasis on competition, and believes that whenever the government is considering converting work from one sector to another, public-private competitions should be the norm. Direct conversions (a decision to convert one or more positions from performance in one sector to the other without a public-private competition, although private-private competition may well exist) generally should occur only where

the number of affected positions is so small that the costs of conducting a public-private competition clearly would outweigh any expected savings (i.e., a *de minimis* number, no more than 10 positions). There should be adequate safeguards to ensure that activities, entities, or functions are not improperly unbundled as a means to come under the ceiling to avoid competition. Any exception to the *de minimis* rule, based on clear, transparent, and consistently applied criteria, would need to be approved by the head of the agency. If that approval is obtained, any subsequent private-private competition should include as an evaluation criterion the favorable treatment of incumbent employees, in terms of retention, wages, and benefits.

The Panel also heard about several successful undertakings involving public-private partnerships, as well as about the importance of labor-management cooperation in accomplishing agency missions. A consistent theme at the hearings was the need for a strategic approach to sourcing decisions, rather than an approach that relies on the use of arbitrary quotas or that is unduly constrained by personnel ceilings. Critical to adopting a strategic approach is having an enterprisewide perspective on service contract expenditures, yet the federal government lacks timely and reliable information about exactly how, where, and for what purposes, in the aggregate, taxpayer dollars are spent for both in-house and contracted services. The Panel was consistently reminded about, and fully agrees with, the importance of ensuring accountability throughout the sourcing process, providing adequate training and technical support to the workforce in developing proposals for improving performance, and assisting those workers who may be adversely affected by sourcing decisions.

Sourcing policy is inextricably linked to human resource and human capital policies. This linkage has many levels, each of which is important. It is particularly important that sourcing strategies support, not inhibit, the government's efforts to recruit and retain a high-performing in-house workforce, as well as support its efforts to access and collaborate with high-performance, private-sector providers. Properly addressed, these policies should be complementary, not conflicting.

The Panel fully agrees with the importance of ensuring accountability throughout the sourcing process, and of providing adequate training and technical support to the workforce.

Sourcing Principles

Based on public input, review of previous studies and other relevant literature, and many hours of deliberation, the Panel developed and unanimously adopted a set of principles that it believes should guide sourcing policy for the federal government. While each principle is important, no single principle stands alone. As such, the Panel adopted the principles as a package. The Panel believes that federal sourcing policy should:

1. **Support agency missions, goals, and objectives.**

   Commentary: This principle highlights the need for a link between the missions, goals, and objectives of

federal agencies and related sourcing policies.

2. **Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce.**

   Commentary: This principle underscores the importance of considering human capital concerns in connection with the sourcing process. While it does not mean that agencies should refrain from outsourcing due to its impact on the affected employees, it does mean that the federal government's sourcing policies and practices should consider the potential impact on the government's ability to attract, motivate, retain, and reward a high-performing workforce both now and in the future. Regardless of the result of specific sourcing decisions, it is important for the workforce to know and believe that they will be viewed and treated as valuable assets. It is also important that the workforce receive adequate training to be effective in their current jobs and to be a valuable resource in the future.

3. **Recognize that inherently governmental and certain other functions should be performed by federal workers.**

   Commentary: Recognizing the difficulty of precisely defining "inherently governmental" and "certain other functions," there is widespread consensus that federal employees should perform certain types of work. OMB Directive 92-1 provides a framework for defining work that is clearly "inherently governmental," and the Federal Activities Inventory Reform (FAIR) Act has helped to identify commercial work currently being performed by the government. It is clear that government workers need to perform certain warfighting, judicial, enforcement, regulatory, and policymaking functions, and the government may need to retain an in-house capability even in functions that are largely outsourced. Certain other capabilities, such as adequate acquisition skills to manage costs, quality, and performance and to be smart buyers of products and services, or other competencies such as those directly linked to national security, also must be retained in-house to help ensure effective mission execution.

4. **Create incentives and processes to foster high-performing, efficient, and effective organizations throughout the federal government.**

   Commentary: This principle recognizes that historically it has primarily been when a government entity goes through a public-private competition that the government creates a "most efficient organization" (MEO). Since such efforts can lead to significant savings and improved performance, they should not be limited to public-private competitions. Instead, the federal government needs to provide incentives for its employees, its managers, and its contractors to constantly seek to improve the economy, efficiency, and effectiveness of the delivery of government services through a variety of means, including competition, public-private partnerships, and enhanced worker-management cooperation.

5. **Be based on a clear, transparent, and consistently applied process.**

   Commentary: The use of a clear, transparent, and consistently applied process is key to ensuring the integrity of the process as well as to creating trust in the process on the part of those it most affects: federal managers, users of the services, federal employees, the private sector, and the taxpayers.

6. **Avoid arbitrary full-time equivalent (FTE) or other arbitrary numerical goals.**

   Commentary: This principle reflects an overall concern about arbitrary numbers driving sourcing policy or specific sourcing decisions. The success of government programs should be measured by the results achieved in terms of providing value to the taxpayer, not the size of the in-house or contractor workforce. Any FTE or other numerical goals should be based on considered research and analysis. The use of arbitrary percentage or numerical targets can be counterproductive.

The success of government programs should be measured by the results achieved in terms of providing value to the taxpayer, not the size of the in-house or contractor workforce.

7. **Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles.**

   Commentary: Competitions, including public-private competitions, have been shown to produce significant cost savings for the government, regardless of whether a public or a private entity is selected. Competition also may encourage innovation and is key to improving the quality of service delivery. While the government should not be required to conduct a competition open to both sectors merely because a service could be performed by either public or private sources, federal sourcing policies should reflect the potential benefits of competition, including competition between and within sectors. Criteria would need to be developed, consistent with these principles, to determine when sources in either sector will participate in competitions.

8. **Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible.**

   Commentary: This principle addresses key criteria for conducting competitions. Ineffective or inefficient competitions can undermine trust in the process. The result may be, for private firms (especially smaller businesses), an unwillingness to participate in expensive, drawn-out competitions; for federal workers, harm to morale from overly long competitions; for federal managers, reluctance to compete functions under their control; and for the users of services, lower performance levels and higher costs than necessary.

Fairness is critical to protecting the integrity of the process and to creating and maintaining the trust of those most affected. Fairness requires that competing parties, both public and private, or their representatives, receive comparable treatment throughout the competition regarding, for example, access to relevant information and legal standing to challenge the way a competition has been conducted at all appropriate forums, including the General Accounting Office (GAO) and the United States Court of Federal Claims.

Public-private competitions should be structured to take into account the government's need for high-quality, reliable, and sustained performance, as well as cost efficiencies.

9. **Ensure that competitions involve a process that considers both quality and cost factors.**

   Commentary: In making source selection decisions in public-private competitions: (a) cost must always be considered; (b) selection should be based on cost if offers are equivalent in terms of non-cost factors (for example, if they offer the same level of performance and quality); but (c) the government should not buy whatever services are least expensive, regardless of quality. Instead, public-private competitions should be structured to take into account the government's need for high-quality, reliable, and sustained performance, as well as cost efficiencies.

10. **Provide for accountability in connection with all sourcing decisions.**

    Commentary: Accountability serves to assure federal workers, the private sector, and the taxpayers that the sourcing process is efficient and effective. Accountability also protects the government's interest by ensuring that agencies receive what they are promised, in terms of both quality and cost, whether the work is performed by federal employees or by contractors. Accountability requires defined objectives, processes and controls for achieving those objectives, methods to track success or deviation from objectives, feedback to affected parties, and enforcement mechanisms to align desired objectives with actual performance. For example, accountability requires that all service providers, irrespective of whether the functions are performed by federal workers or by contractors, adhere to procedures designed to track and control costs, including, where applicable, the Cost Accounting Standards. Accountability also would require strict enforcement of the Service Contract Act, including timely updates to wage determinations.

The Panel used these principles to assess the government's existing sourcing system and concluded that there are some advantages to the current system. First, A-76 cost comparisons are conducted under an established set of rules, the purpose of which is to ensure that sourcing decisions are based on uniform, transparent, and consistently applied criteria. Second, the A-76 process has enabled federal managers to make cost comparisons between sectors that have

vastly different approaches to cost accounting. Third, the current A-76 process has been used to achieve significant savings and efficiencies for the government. Regardless of whether the public or the private-sector wins the cost comparison, Department of Defense (DOD) officials have noted that savings of 20 percent or more are not uncommon. This is because competitive pressures promote efficiency and improve the performance of the activity studied.

But despite these advantages, the Panel heard frequent criticism of the A-76 process as being slow, too complicated, unfair to either or both sectors, and causing needless distress to federal workers. In the Panel's view, however, the most serious shortcoming of the A-76 process is that it has been stretched beyond its original purpose, which was to determine the low-cost provider of a defined set of services. Circular A-76 has not worked well as the basis for competitions that seek to identify the best provider in terms of quality, innovation, flexibility, and reliability. This is particularly true in an era where solutions are increasingly driven by technology — even for what have traditionally been considered "low-tech" requirements, particularly those that require investment. Furthermore, since A-76 is designed to compare direct functional costs, it ignores overall long-term benefits to the enterprise, in addition to cost savings. As the federal procurement system has moved in the decades since the Circular was first issued from a low-price approach toward consideration of non-price factors in making source selections, the A-76 process may no longer be an effective tool for conducting competitions to identify the most efficient and effective service provider. In the federal procurement system today, there is a common recognition that a cost-only focus does not necessarily deliver the best quality or performance for the government. Thus, while cost is always a factor, and often the most important factor, it is not the only factor. In this sense, the competitive process under the Circular is now an anomaly in the federal procurement process in that it effectively inhibits consideration of important non-cost factors. The Panel concludes that the current sourcing system, including the A-76 process, is not consistent with its recommended principles.

The government has an established mechanism that has been shown to work as a means to identify high-value service providers: the negotiated procurement process of the Federal Acquisition Regulation (FAR). The Panel believes that in order to promote a more level playing field on which to conduct public-private competitions, the government needs to shift, as rapidly as possible, to a FAR-type process under which all parties compete under the same set of rules. Appropriate modifications would be needed to accommodate a public-sector competitor, and the competition approach would need to be consistent with the ten principles noted above. The Panel recognizes that implementing such a shift may take some time, and therefore

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has developed a set of recommendations to improve A-76 for competitions conducted in the interim. The Panel also has developed a proposed implementation strategy.

Summary of Recommendations:
(Details in Section V)

A. Adoption of Sourcing Principles.

The Panel unanimously recommends that all sourcing decisions be guided by the sourcing principles and commentary listed above.

A supermajority of the Panel adopts the following package of three additional recommendations:

B. Integrated Competition Process.

The Panel believes that all parties – taxpayers, agencies, employees, and contractors – would be better served by conducting public-private competitions under the framework of the FAR, while using appropriate elements of the current A-76 process. In essence, a public-sector proposal (which could provide for process improvements, as with MEOs under A-76) could be submitted in response to a broad range of agency solicitations, including in appropriate cases, work currently contracted out and new work, and have the proposal evaluated under the same rules that apply to proposals from private-sector offerors. Although some changes in the process will be necessary to accommodate the public-sector proposal, the same basic rights and responsibilities would apply to both the private and the public sectors, including accountability for performance and the right to protest. This and perhaps other aspects of the integrated competition process would require changes to current law or regulation, and the Panel urges the Congress and the administration to begin work immediately toward that end.

C. Limited Changes to Circular A-76.

Development of an integrated FAR-type process will require some time to be implemented. In the meantime, the Panel expects current A-76 activities to continue, and therefore believes some modifications to the existing process can and should be made. Accordingly, the Panel recommends a number of limited changes to OMB Circular A-76. These changes would, among other things, strengthen conflict of interest rules, improve auditing and cost accounting, and provide for binding performance agreements.

D. High-Performing Organizations.

The Panel recommends that the government take steps to encourage high-performing organizations (HPOs) and continuous improvement throughout the federal government, independent of the use of public-private competitions. In particular, the Panel recommends that the Administration develop a process to be used to select a limited number of functions currently performed by federal employees to become HPOs, and then evaluate their performance. As to those functions, authorized HPOs would be exempt from competitive sourcing studies for a designated period of time. Overall, however, the HPO

process is intended to be used in conjunction with, not in lieu of, public-private competitions.

Successful implementation of the HPO concept will require a high degree of cooperation between labor and management, as well as a firm commitment by agencies to provide sufficient resources for training and technical assistance. In addition, a portion of any savings realized by the HPO should be available to reinvest in continuing reengineering efforts and for the HPO to use for further training and/or for incentive purposes. There are a variety of approaches for implementing the HPO concept. While the Panel is not recommending the use of any particular approach, Appendix B outlines one possibility.

Implementation Strategy

Many of the Panel's recommendations can be accomplished administratively under existing law, and the Panel recommends that they be implemented as soon as it is practical to do so. The Panel recognizes, however, that some of its recommendations would require changes in statutes or regulations, and that making the necessary changes could take some time. Moreover, although the Panel views the use of a FAR-type process for conducting public-private competitions as the end state, the Panel also recognizes that some elements of its recommendations represent a shift in current procedures for the federal government, and therefore need to be demonstrated and then refined based upon experience. For these reasons, the Panel recommends a phased implementation strategy as follows.

A-76 studies currently underway or initiated during the near term should continue under the current framework. Subsequent studies should be conducted in accordance with the improvements listed in Section V, Recommendations.

OMB should develop and oversee the implementation of a FAR-type, integrated competition process. In order to permit this to move forward expeditiously, it may be advisable to limit the new process initially to agencies where, except for allowing protests by federal employees, its use would not require legislation, that is, civilian agencies. Statutory provisions applying only to defense agencies may require repeal or amendment before the new process could be used effectively at DOD, and the Panel recommends that any legislation needed to accommodate the integrated process in DOD be enacted as soon as possible. As part of a phased implementation and evaluation process, the Panel recommends that the integrated competition process be used in a variety of agencies and in meaningful numbers across a broad range of activities, including those currently performed by federal employees, work currently performed by contractors, and new work.

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Based on the results generated during the demonstration period, and on the reports submitted by OMB and GAO, Congress will then be in a position to determine the need for any additional legislation.

Within 1 year of initial implementation of the new process, and again 1 year later, the Director of OMB should submit a detailed report to the Congress identifying the costs of implementing the new process, any savings expected to be achieved, expected gains in efficiency or effectiveness of agency programs, the impact on affected federal employees, and any lessons learned as a result of the use of this process, together with any recommendations for appropriate legislation. The GAO would review each of these OMB reports and provide its independent assessment to the Congress. The Panel anticipates that OMB would use the results of its reviews to make any needed "mid-course corrections." Based on the results generated during the demonstration period, and on the reports submitted by OMB and GAO, Congress will then be in a position to determine the need for any additional legislation.

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Section II

The Current Sourcing System

Introduction

Since 1955, it has been Executive Branch policy that the government should not compete with its citizens, and therefore that federal agencies generally should obtain commercially available services from the private sector. The policy has recognized, however, that circumstances may exist when commercial services should be obtained in-house using government employees. This section describes the current process used by federal agencies for determining whether commercial activities should be performed by government employees or by the private sector.

Identifying Commercial Activities

The process for identifying an agency's commercial activities begins with the Federal Activities Inventory Reform Act (FAIR) of 1998.[1] The FAIR Act requires agencies to develop and submit to OMB annual inventories of their positions that are "not inherently governmental,"[2] that is, commercial. Upon submission of an agency's FAIR Act inventory of commercial activities, the Director of OMB reviews it and then consults with the head of the agency regarding its content. After this review and consultation, the agency must submit the inventory to Congress and make it available to the public. Once the inventory has been made public, the FAIR Act allows for a limited appeals process for interested parties to challenge either the omission or the inclusion of a particular activity. Inclusion of positions on the FAIR Act inventories does not mean that the positions will be outsourced, or even that the positions necessarily will be involved in an A-76 competition.

To date, the FAIR Act process has gone through three cycles. Table 1 shows the number of commercial FTEs (full-time equivalents) reported over the past 3 years by the 11 federal agencies with the largest number of commercial activities. (After the Department of Energy, the number of commercial FTEs for any one agency drops precipitously.) Figure 1 illustrates the distribution of the most recent fiscal year (FY) 2001 inventory results.

Guidelines implementing the FAIR Act outline a variety of reasons permitting agencies to exclude certain commercial activities from being considered eligible for competition; they may include such reasons as legislative exemptions, national security considerations, etc. Accordingly, the number of positions deemed eligible for competition may be much smaller than the overall inventory of commercial activities. For example, DOD reported that only 241,332 positions from its fiscal year 2001 inventory were considered eligible for competition.

With the first implementation of the FAIR Act in 1999, several issues were raised. These issues included the lack of a uniform list format (making comparisons across agencies difficult), vague function and reasons codes by which each position was categorized, insufficient time for the appeals process, and concern that an unreasonably high number of activities were being exempted from competition or that inherently governmental activities were being included on the inventories.

[1] Pub. L. No. 105-270, 112 Stat. 2382 (1998).

[2] Section 5 of Pub. L. No. 105-270, codified at 31 U.S.C. 501 note (1998), defines an inherently governmental function as a "function that is so intimately related to the public interest as to require performance by Federal Government employees."

Table 1

The 11 Federal Agencies with the Greatest Number of Commercial Positions in 2001

Federal Agency	1999 Positions	2000 Positions	2001 Positions
Defense	504,417	452,807	412,756
Veterans Affairs	187,077	185,203	189,399
Agriculture	48,000	46,516	42,691
Health and Human Services	31,849	31,379	32,843
Interior	17,979	20,069	23,186
Treasury	27,312	26,663	29,395
Social Security Administration	10,805	11,619	11,953
Transportation	11,421	11,008	11,526
State	1,397	2,036	10,492
Justice	3,507	1,264	10,260
Energy	11,765	9,941	9,889

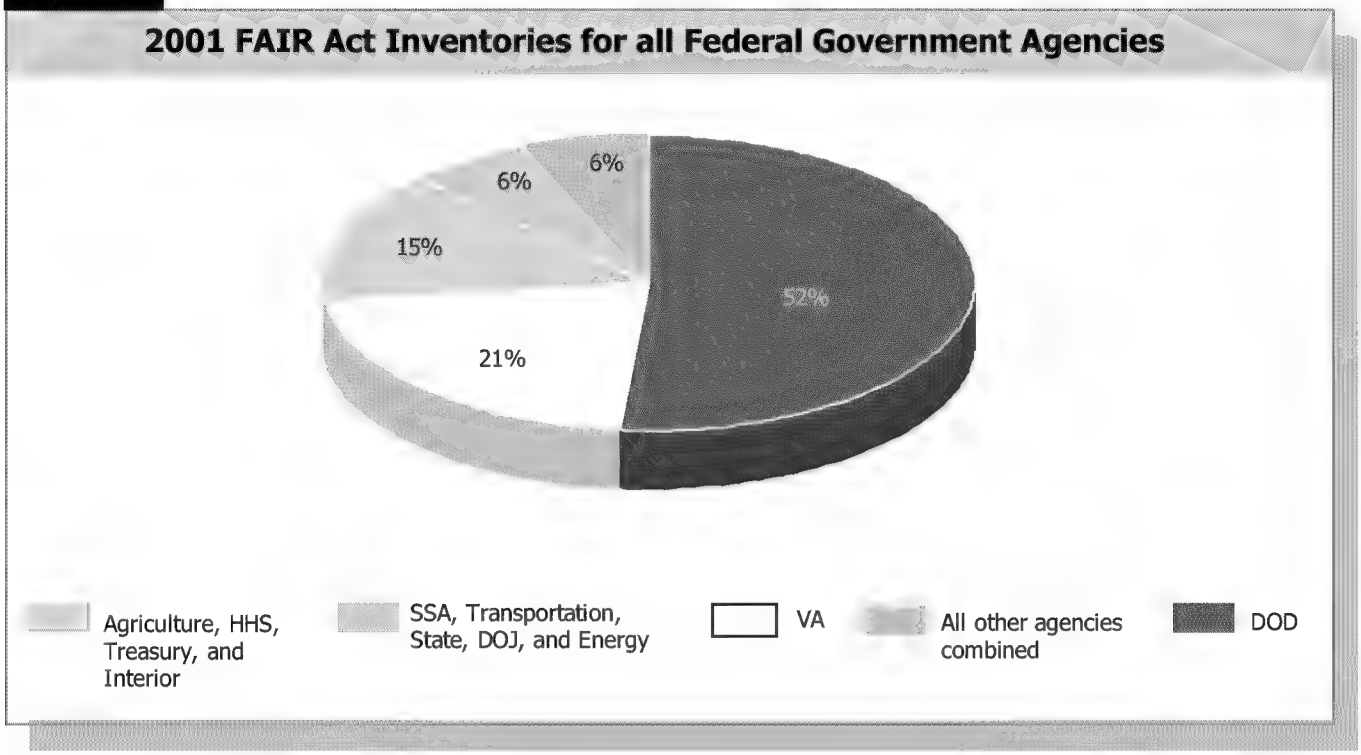
Source: OMB.

In response to complaints following the June 1999 inventory, OMB provided agencies with additional guidance for implementing the FAIR Act. It established additional function codes and a standard format for inventories, and it requested that agencies post their commercial activities inventories on their websites. Furthermore, it lengthened the challenge and appeals process timeline and issued a FAIR Act Inventory User's Guide that describes the scope and format of FAIR Act inventories, explains the challenge and appeals process, and reviews the information included in an agency's annual management report. In April 2001, OMB issued Memorandum M-01-16 to mandate that agencies submit an inventory of their inherently governmental activities as well by June 30 of each year. This inventory uses the same format as that for commercial activities.

The A-76 Cost Comparison Process: Overview

The overall purpose of A-76 is to provide uniform policy for how federal agencies manage functions that provide commercial services. Circular A-76 outlines conditions under which agencies are

Figure 1



Source: GAO analysis of OMB data.

permitted to perform a commercial activity with government employees or by contract. It provides policy for standardizing how and when an agency competes a commercial activity with the private sector.

In general, the A-76 cost comparison process consists of six key steps:

1. Developing a performance work statement (PWS);
2. Developing a Government Management Plan to determine the government's "most efficient organization" (MEO);
3. Developing an in-house government cost estimate for the in-house plan;
4. Issuing a solicitation for private-sector offers (under the FAR provisions that apply to federal procurements in general);
5. Selecting the best private-sector offer and comparing it with the in-house estimate, then selecting the lower cost alternative; and
6. Addressing any appeals submitted under the administrative appeals process, which is designed to ensure that all costs are fair, accurate, and calculated in the manner prescribed by the A-76 handbook.[3]

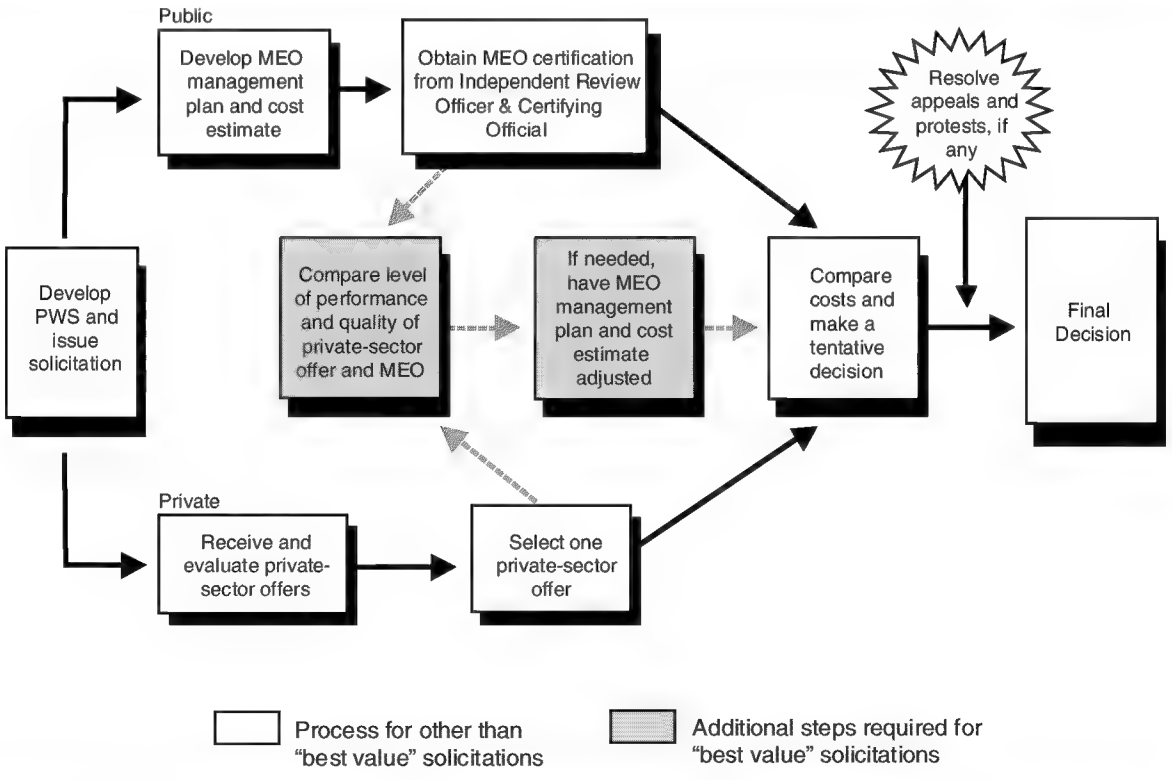
[3] In 1979, OMB supplemented the Circular with a handbook that included procedures for competitively determining whether commercial activities should be performed in-house, by another federal agency through an interservice support agreement (ISSA), or by the private sector. OMB updated this handbook in August 1983 and March 1996.

Figure 2 shows an overview of the process. The solid lines indicate the process used when the government issues a solicitation that does not anticipate a cost/technical tradeoff among private-sector offers (that tradeoff process is often referred to as a "best value" source selection). The dotted lines indicate the additional steps that take place when the solicitation provides for a best value source selection.

The Circular generally calls for a cost comparison to be used whenever an agency is contemplating shifting work between sectors, that is, from in-house performance to contract or vice versa. There are situations, however, in which work can be directly converted between sectors (that is, shifted from the public to the private sector, or vice versa) without a cost comparison, including, for example, functions with 10 or fewer FTEs. In

Figure 2

Overview of the A-76 Cost Comparison Process



Source: GAO analysis.

addition, if an agency has a new requirement for services, it may obtain the services by contract without a cost comparison. A cost comparison also is not required if a service is currently being obtained through a competitively awarded contract, the quality of service is acceptable, and the price is fair and reasonable. The Circular provides for waivers of the requirement for cost comparisons under certain conditions, and specifies the level of officials authorized to sign a waiver.

The A-76 Cost Comparison Process: How it Works

One of the earliest steps in the A-76 cost comparison process is the development of a performance work statement (PWS). The PWS defines, for both the in-house team and the private-sector competitors, what is being requested, the performance standards and measures, and timeframes required.

The competition among private-sector offerors is conducted much as any federal procurement competed under the FAR. The agency incorporates the PWS into a solicitation inviting the submission of proposals. The competition may be conducted on the basis of a comparative technical or past performance evaluation that is, an evaluation contemplating a tradeoff between proposals based on cost and technical factors or past performance. Where that is the case, the agency's source selection authority selects which private-sector offer represents the "best value" to the government. Alternatively, an agency's source selection strategy may call for selection of the low-priced, technically acceptable proposal. Whichever basis for award is to be used (cost/technical tradeoff, low-priced/technically acceptable, or other), the agency must advise offerors of that basis in the solicitation. In any case, the same evaluation criteria will apply to all private-sector proposals, and, typically, the same team in the agency (often referred to as a source selection evaluation board) will evaluate all proposals.

The 1996 Revised Supplemental Handbook to A-76 requires the in-house team to prepare a cost estimate consistent with guidance in the Handbook, as well as a management plan responsive to the PWS (which also governs the private-sector competition through the solicitation). The management plan identifies, among other things, the organizational structures and staffing planned by the in-house team. Department of Defense activities often receive contractor assistance in preparing their management plans and in-house cost estimates. Because the in-house plan will ultimately be in a cost-only comparison with the selected private-sector proposal, the in-house plans naturally aim to meet, but not exceed, the requirements of the PWS.

A "certifying official" must certify that the management plan reflects the in-house "most efficient organization." The certifying official must be organizationally independent of the function under study or at least two levels above the most senior official included in the in-house cost estimate. The certifying official must be able to commit to the provision of the necessary resources to perform the activity.

An independent review officer (IRO) reviews the in-house plan and cost estimate to ensure that they establish the government's ability to perform the PWS requirements within the resources provided by the MEO management plan and

that the costs identified are fully justified. The IRO has typically not seen any of the private-sector proposals.

The public-private cost comparison follows detailed instructions in the Revised Supplemental Handbook and the Cost Comparison Handbook. Among the main in-house costs are personnel (calculated based on number of FTEs and grade levels), materials and supplies, and overhead. As part of the cost comparison, certain costs will be adjusted, primarily through additions to the proposed price of the selected private-sector proposal. Among the key adjustments are contract administration costs (estimates of the cost for personnel to administer a contract with a private firm) and "one time conversion costs" (costs that will be incurred because of the conversion from public to private sector, such as the cost of relocating or separating federal employees displaced as a result of a decision to contract out). Once the adjusted costs of the two sectors have been calculated, the work will remain where it is (that is, it will not be shifted between sectors) unless the difference between the two adjusted costs exceeds the minimum conversion differential. That differential is 10 percent of the in-house personnel costs or $10 million, whichever is less.

When the private-sector selection involves a cost/technical tradeoff (often referred to as a "best value" solicitation), the contracting officer submits the in-house management plan to the source selection authority, who evaluates the in-house plan to assess whether it will achieve the same level of performance and quality as the selected private-sector offer. If not, all changes necessary to make the level of the in-house plan comparable to that of the private-sector proposal must be made. This leveling process has been a source of significant criticism. After completion of the leveling process, there is a cost comparison between the private-sector offer and the in-house plan, leading to a tentative cost comparison decision.

Of the 22 decisions that GAO has issued in protests involving A-76 cost comparisons since January 1999, GAO sustained 11 and denied 11.

Under Circular A-76, either a tentative cost comparison decision or a tentative waiver of the cost comparison process may be appealed to an administrative appeal authority, typically an agency appeal board. An appeal may be filed by any federal employee (or employee representative) or affected private-sector firm (for example, a firm that submitted an offer). DOD statistics show 101 appeals filed in FY 1997-2001, with 6 of them resulting in reversal of a tentative cost comparison decision.

If the result of an appeal is that work is to be performed in-house, a private-sector offeror may protest, either to GAO or to the Court of Federal Claims. Federal employees and their representatives are not permitted to protest to either forum, because both have held that federal employees and their representatives lack standing to protest, that is, they are not "interested parties" allowed to protest under the Competition in Contracting Act of 1984. (See Appendix C.)

Of the 22 decisions that GAO has issued in protests involving A-76 cost comparisons since January 1999, GAO sustained 11 and denied 11. "Sustaining" a protest means that GAO found that the agency had violated procurement statutes or regulations in a way that prejudiced the

protester. Protests involving A-76 represent a very small percentage of the many hundreds of bid protest decisions that GAO issued in the past 3 years. They do, however, indicate an unusually high percentage of sustained protests. In protests decisions covering all procurements, GAO has sustained about one-fifth of the protests, while in A-76 protests, GAO has sustained half. The issues that caused GAO to sustain protests in A-76 procurements can be summarized as follows: (1) individuals had a conflict of interest because they had a stake in the MEO winning the cost comparison while they also played a role requiring neutrality in the cost comparison; (2) the PWS was not applied comparably to the MEO and the private-sector proposals; (3) the calculation of the in-house cost estimate or the adjustments to the private-sector proposal's price were not reasonable; and (4) the agency did not reasonably carry out the "leveling" process taking into account ways in which the selected private offer exceeded the PWS requirements. (Further detail about GAO's bid protest decisions in A-76 cost comparisons is provided in Appendix D.)

Once a final decision is made, either to contract work out or to perform it in-house, the current system imposes certain accountability rules. If a contract is awarded, the contractor is required to perform under the terms agreed to in the contract. If the contractor fails to perform as required, the government may take steps to enforce the terms of the contract, ultimately leading, if necessary, to termination of the contract for default under Part 49 of the FAR. In such cases, the contractor could be required to pay any extra costs that the government incurs in reprocuring its requirements. If the MEO is selected in an A-76 cost comparison, the Handbook calls for a formal review, after the first year of performance, of at least 20 percent of the functions performed in-house as a result of a cost comparison. The purpose of the review is to ensure that the staffing proposed in the MEO has been implemented, that the PWS requirements are being met, and that costs are within the in-house cost estimate. There is concern, however, that too few reviews are being performed.

Use of Circular A-76 Competitions

Notwithstanding the Circular's long history, A-76 cost comparisons have not been widely used, except for a period in the 1980s and again in the past 5 years. Administrative and legislative constraints from the late 1980s through 1995 resulted in a temporary suspension in the conduct of A-76 cost comparisons. DOD has been the leader among federal agencies in recent years in its use of OMB Circular A-76. The box below shows the types of positions that typically are the subject of A-76 actions at DOD.

Commercial functions typically subject to the A-76 process at the Department of Defense (in descending order of the number of positions involved):

- *Installation Services*
- *Aircraft Equipment Maintenance*
- *Real Property Maintenance Services*
- *Logistics Services*
- *Information and Communications*
- *Acquisition and Supply Operations*
- *Transportation Services*
- *Computer/ADP Services*
- *RDT&E Support*
- *Education and Training Services*
- *Commissary Operations*

Source: DOD

Table 2

Department of Defense
Summary of Sourcing Decisions Completed Between FY 1997 and FY 2001
(By Type of Process Permitted Under OMB Circular A-76)

Type of Process	Number of Decisions	Civilian Positions	Military Positions	Total Positions
Cost Comparisons	314	30,423	6,564	36,987
Streamlined Cost Comparisons	50	1,014	5	1,019
Direct Conversions	418*	2,767	5,356	8,123
Total Sourcing Decisions	**782***	**34,204**	**11,925**	**46,129**

*Five direct conversions to ISSA performance (total of 30 positions).

Source: DOD.

Table 2 highlights use by the Department of Defense of A-76 competitions between fiscal year 1997 and fiscal year 2001.

Few civilian agencies have utilized the process; in fact, in FY 1997, not one civilian agency reported conducting an OMB Circular A-76 cost comparison study, and recent use by civilian agencies of the A-76 cost comparison process has been almost non-existent.

In 2001, however, OMB signaled its intention to direct greater use of the Circular on a government-wide basis. In a March 9, 2001, memorandum to the heads and acting heads of departments and agencies, the OMB Deputy Director required agencies to take action in fiscal year 2002 to directly convert or complete public-private cost comparisons for not less than 5 percent of the FTE positions listed in their FAIR Act inventories. Subsequent guidance established a similar requirement for an additional 10 percent in 2003. The Administration's stated ultimate aggregate goal is to conduct public-private competitions for or directly convert 50 percent of the FAIR Act inventories.

Public-private competition through the use of OMB Circular A-76 represents a very small percentage of total service contracting. For example, DOD reported to Congress that only 2 percent of the service contracting dollars it awarded in FY 1999 resulted from its use of A-76.[4]

[4] U.S. Department of Defense, Report to the Senate on Completed DOD A-76 Competitions (Washington, D.C.: Dec. 22, 2000). The remaining 98% of the work is generally believed to be work that has typically been in the private sector and not performed by government employees, but which is re-competed regularly. Examples include research and development, modification of equipment, technical services, operation and maintenance of government facilities, medical services, utilities (i.e. water, sewage, power, local telephone exchange), transportation services, lease or rental of buildings, and construction or maintenance of real property.

The Department of Defense anticipates initiating competitions for an additional 45,000 positions by the end of fiscal year 2003. This number may change depending on the results of an internal DOD assessment of core and non-core functions. This assessment will determine the most appropriate methods and approaches to employ to best meet the needs of the Department, including A-76 competitions. Other tools under consideration include reengineering, divestiture, privatization, and public-private partnering. The Department's preferred approach, as discussed in the Quadrennial Defense Review, involves emphasizing divestitures of non-core missions, regardless of who is performing them — whether military, civilian employees or contractors. Resulting savings would be available to invest in higher priority programs within the Department. Plans for announcing an additional 45,000 positions to be studied are based on FY 2003 preliminary budget submissions.

With regard to outcomes, table 3 shows the results of the various A-76 actions during the past 5 fiscal years at DOD.

One complaint frequently heard about the A-76 process is that it takes an extraordinarily long time to complete. Table 4 shows the average amount of time to complete various types of A-76 actions.

Table 3

Results of Department of Defense Sourcing Decisions Completed Between FY 1997 and FY 2001 (By Type of Process Permitted Under OMB Circular A-76)

Type of Process	In-house Decisions		Contract Decisions	
	Decisions	Positions	Decisions	Positions
314 Cost Comparisons (36,987 positions)	**60%** (187 decisions)	**51%** (18,946 positions)	**40%** (127 decisions)	**49%** (18,041 positions)
50 Streamlined Cost Comparisons (1,029 positions)	**98%** (49 decisions)	**95%** (966 positions)	**2%** (1 decision)	**5%** (53 positions)
418* Direct Conversions (8,123 positions)	**12%** (51 decisions)	**2%** (171 positions)	**87%** (362 decisions)	**98%** (7,922 positions)
782* Total Sourcing Decisions	**37%** (287 decisions)	**44%** (20,083 positions)	**63%** (490 decisions)	**56%** (26,016 positions)

*Five direct conversions to ISSA performance (total of 30 positions). Figures for in-house direct conversions represent determinations that it was not cost effective to convert to the private sector.

Table 4

Department of Defense
Sourcing Decisions Completed Between FY 1997 and FY 2001
Completion Times By Size of Function

Average Months to Perform	Large*	Medium**	Small***
(1) Cost Comparison Process			
Total Average Months	**29 months**	**27 months**	**36 months**
Break-out of Average Months			
Start Date Until Solicitation Issued Date	**20 months**	**20 months**	**31 months**
Solicitation Issued Date Until Tentative Decision Date	**9 months**	**8 months**	**5 months**
(2) Direct Conversion Process			
Total Average Months	**18 months**	**9 months**	**11 months**
(3) Streamlined Cost Comparison Process = 20 Months Regardless of Size			

Size of Function:
* **Large:** More than 100 positions ** **Medium:** 11-100 positions *** **Small:** 10 or fewer positions

Single and Multi-functions Combined to Represent an Average Based on Size of Function

Source: DOD.

Various statutes and regulations are relevant with regard to the Department of Defense (DOD). Particularly important is 10 U.S.C. § 2462(a), which provides that DOD shall generally procure supplies and services from the private sector if that sector can provide the supplies or services at a cost lower than the cost of in-house performance. Public-private competitions must be based on cost only. *Pemco Aeroplex, Inc.; Aero Corp.*, B-275587.9 et al., June 29, 1998, 98-2 CPD ¶ 17. The provision does not apply where another statute authorizes a different basis (such as the depot competitions; see Appendix E).

Section III

Trends and Challenges

As federal agencies decide how best to obtain the services they need to perform their missions, they face a number of evolving challenges. There are rising public expectations for the delivery of government services, and fewer discretionary dollars are available with which to satisfy those expectations. Contracting for services has grown at the same time that the acquisition workforce has been greatly reduced. This section highlights several trends and challenges the Commercial Activities Panel considered in addressing the government's policies and procedures for making sourcing decisions.

Changes in Federal Spending

The current pressures on the federal budget inevitably impact the government's sourcing decisions. These pressures include a rapid escalation of federal spending for entitlement programs, such as Social Security, Medicare, and Medicaid, as well as increased spending to respond to new security challenges. The events of September 11, 2001, brought about new priorities and commitments for the nation. These commitments will continue to compete with other priorities in the federal budget. There are some things that we may be able to afford to do today, but will not be able to sustain in the future.[1] A fundamental review of existing programs and activities is necessary to increase fiscal flexibility and improve how government works in the modern world. This drives the need to evaluate and revise the current approach to acquiring commercial services to ensure it achieves the maximum benefit for all affected parties.

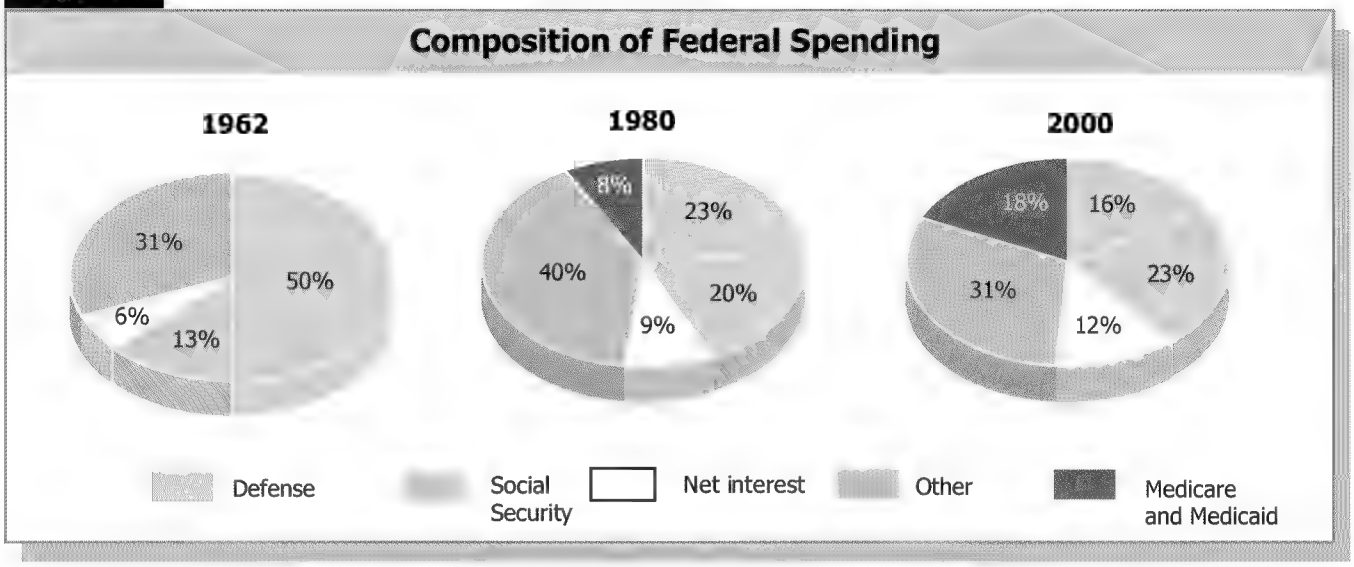
The shift from discretionary to mandatory spending over the past four decades demonstrates the loss of flexibility in the budget. In 1962, over two-thirds of the federal budget was discretionary and 50 percent of the federal budget was dedicated to defense. In fiscal year 2000, about a third of the federal budget was discretionary and only 16 percent of the budget was dedicated to defense. The proportionate decline in defense spending is partially the result of the end of the Cold War and partially an increase in mandatory spending for entitlement programs. As figure 3 shows, entitlement programs represent approximately 49 percent of the federal budget, up from 31 percent in 1962. The reductions in defense spending during the past 39 years primarily went to health care, Social Security, and interest on the federal debt. Both GAO and the Congressional Budget Office expect this trend to continue because of known demographic trends and rising health care costs.

Federal agencies spend billions of tax dollars each year to acquire goods and services—ranging from maintenance services to multibillion-dollar weapon systems to hazardous waste cleanup. According to the General Services Administration (GSA), the federal government procures an average of $1.9 million in goods and services every minute of every business day. The federal government remains the largest customer in the world for many supplies and services.

The Department of Defense is clearly the dominant federal buyer, accounting for about two-thirds of the $235 billion spent on federal acquisition last year. After DOD, the next four largest contracting

[1] U.S. General Accounting Office, *Budget Issues: Long Term Fiscal Challenges*, GAO-02-467T (Washington, D.C.: Feb. 27, 2002).

Figure 3



Source: GAO Analysis.

agencies were the Department of Energy, GSA, NASA, and the Department of Veterans Affairs. Overall federal contracting has declined in the past 15 years (mainly due to the decline in defense contracting) from about $291 billion in fiscal year 1986 to about $235 billion in fiscal year 2001.[2] Civilian agencies increased contract spending by $19 billion during the same time period. However, in the last 3 years defense spending has been on the rise, increasing $17 billion dollars from 1999-2001, while civilian contracting has increased $11 billion during the same period. Figure 4 shows trends in federal contract spending from 1986 to 2001.

As figure 5 shows, contracting for services, including research and development, has increased from $121 billion to $136 billion between 1986 and 2001.[3] In 1986, supplies and equipment accounted for the bulk of contracting dollars – about $145 billion, or 55 percent of total spending. By fiscal year 2001, however, the largest acquisition category was services at $109 billion,[4] or 51 percent of total spending. Again, DOD is the largest user of service contracts, accounting for about one-half ($55 billion) of the $109 billion spent on federal service contracts last year.

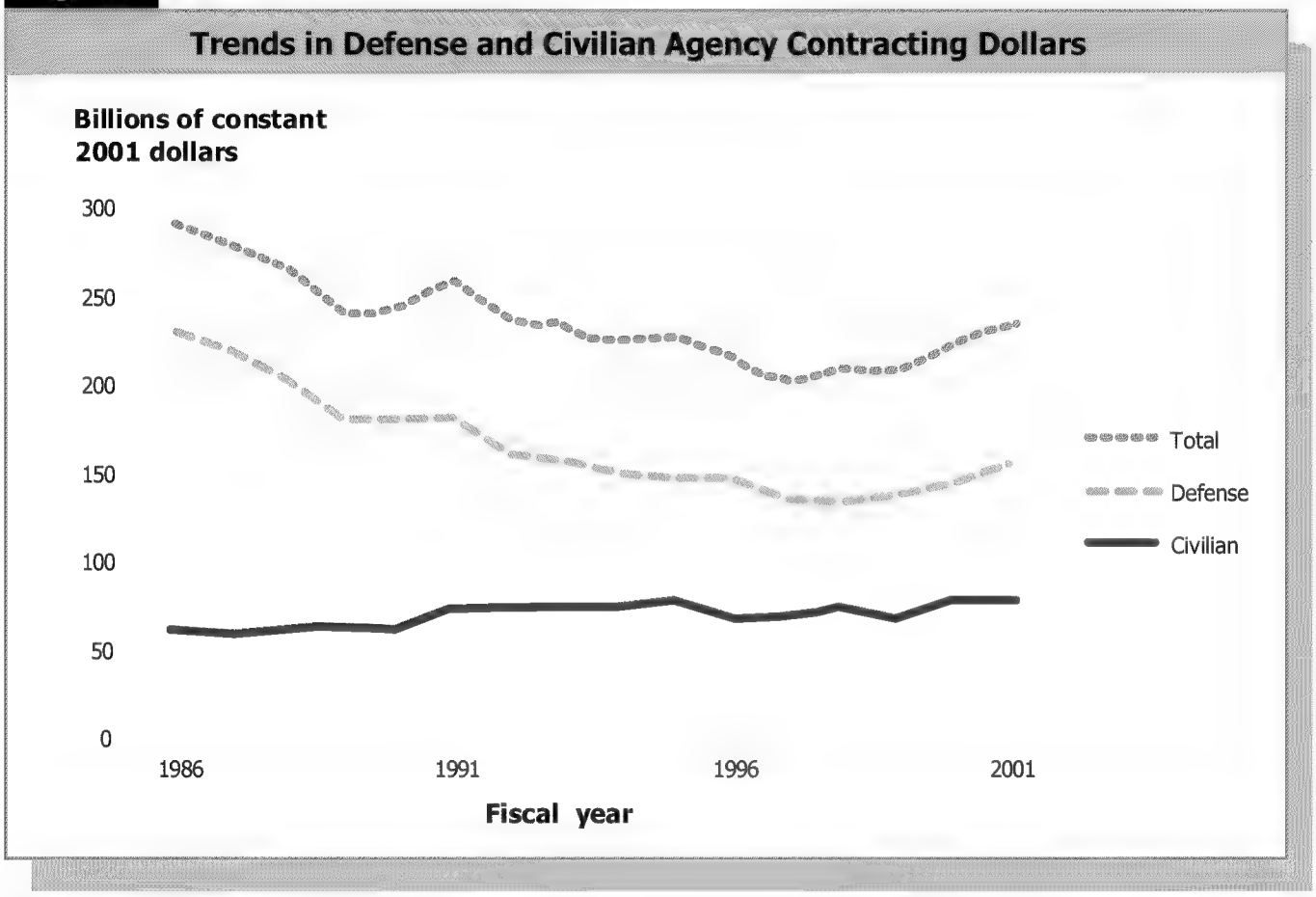
The increase in spending for services has occurred at both civilian and defense

[2] All dollar figures used in this section have been converted to constant 2001 dollars. These figures represent total contracting actions—including those under $25,000.

[3] Key areas for service contracts include the following: (1) maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment; (2) routine recurring maintenance of real property; (3) housekeeping and base services; (4) advisory and assistance services; (5) operation of Government-owned equipment facilities and systems; (6) communications services; (7) architect-engineering; (8) transportation and related services; (9) research and development; and (10) information technology.

[4] This figure excludes R&D, which represents $27 billion (12 percent) of 2001 spending.

Figure 4



Source: All actions reported to the Federal Procurement Data Center.

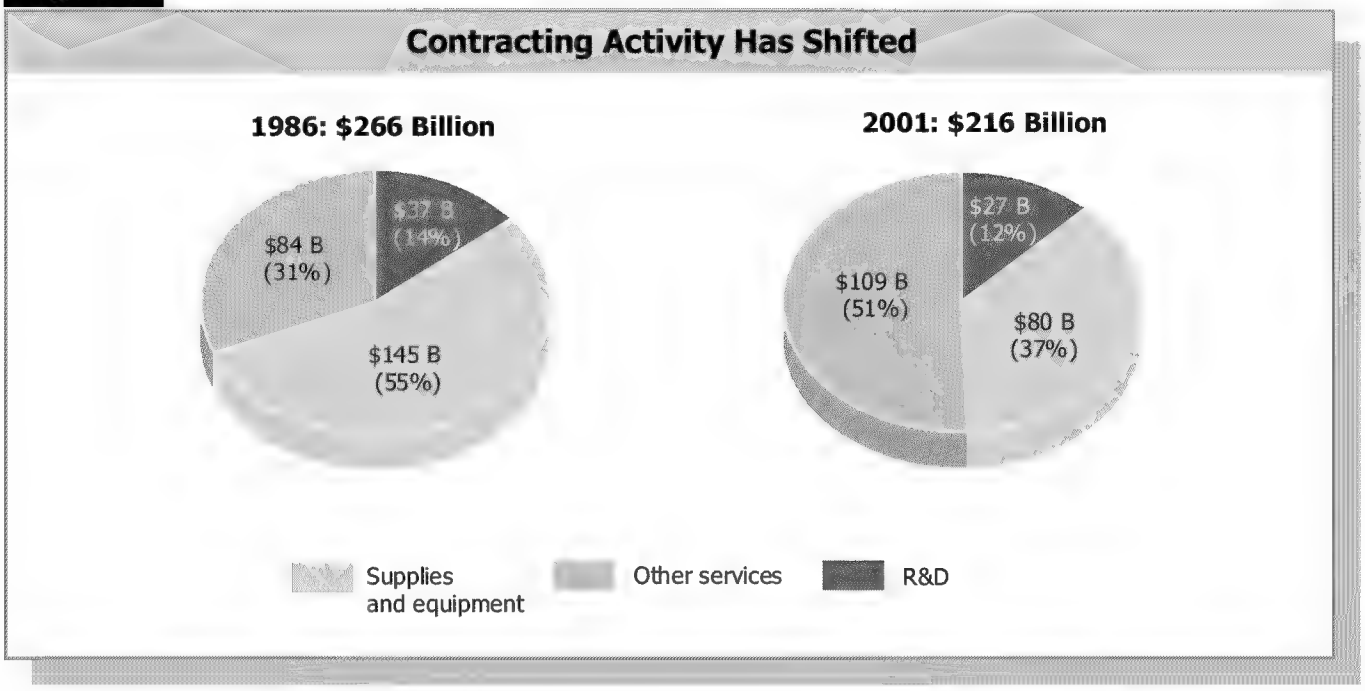
agencies, but the percentage increase at civilian agencies has been greater. For example, using fiscal year 2001 constant dollars:

- spending on service contracts at civilian agencies has increased from $45.6 billion in fiscal year 1991 to $53.9 billion in fiscal year 2001, which is an 18 percent increase.
- spending on service contracts at DOD has increased from $51.5 billion in fiscal year 1991 to $55.3 billion in fiscal year 2001, which is a 7 percent increase.

This shift from supplies to services is primarily driven by acquisitions of information technology and management services. For example:

- professional, administrative, and management support services rose from $12.9 billion in fiscal year 1991 to $20.3 billion in fiscal year 2001, a 58 percent increase.
- information technology services increased from $4.5 billion in fiscal year 1991 to about $15.8 billion in fiscal year 2001, a 251 percent increase.

Figure 5



Source: All actions reported to the Federal Procurement Data Center.

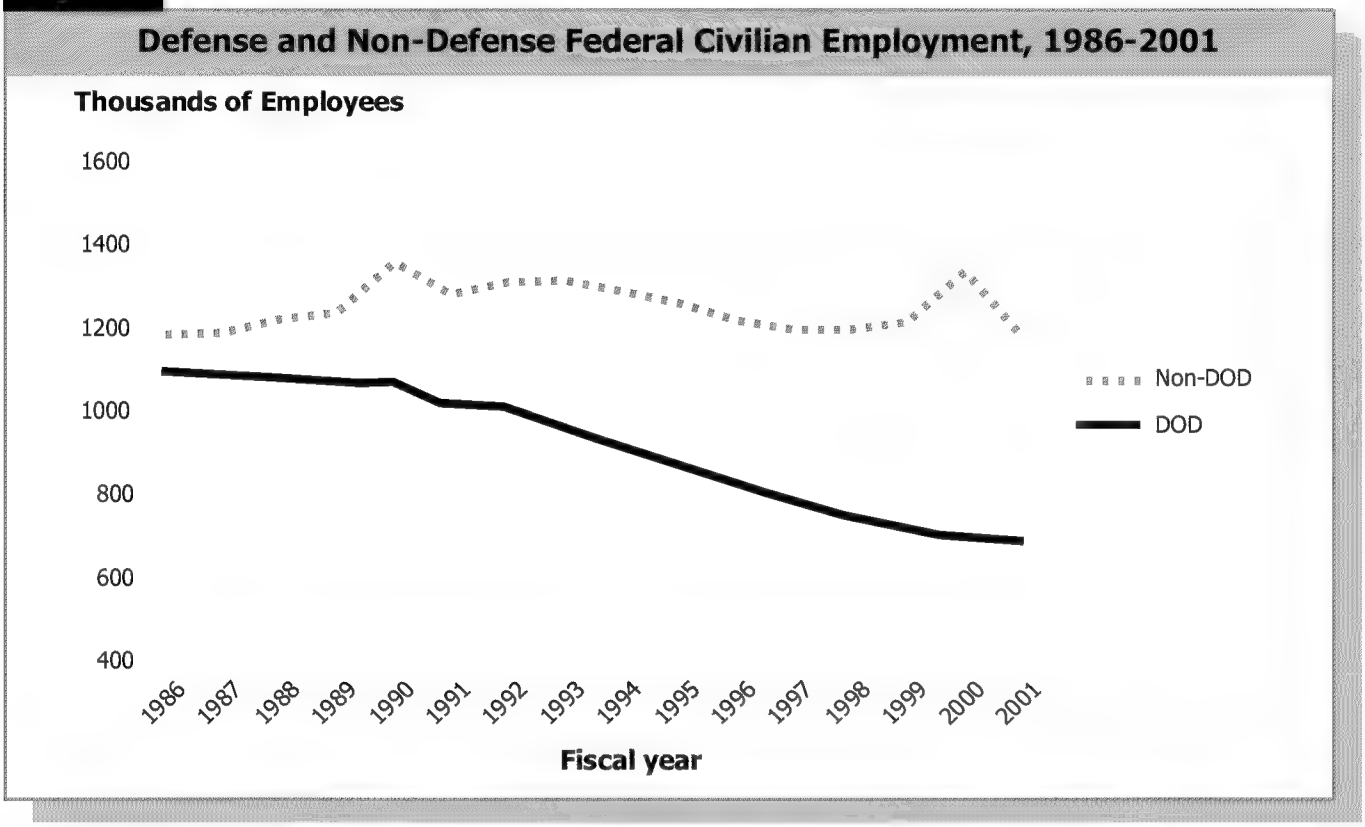
At the same time the need for services was growing at federal agencies, recent changes made it easier for federal agencies to buy services. Agencies can now purchase professional services using contracts awarded and managed by other agencies. For example, GSA offers information technology services under its Federal Supply Schedule program,[5] as well as other services ranging from professional engineering to temporary clerical and support services. Traditionally used for common goods, such as office supplies and furniture, the schedule program has seen a significant increase in its use to acquire services over the past several years.

Changes in the Federal Workforce

Changes in the federal workforce will continue to affect how the government meets its needs and objectives. The federal government workforce has downsized from about 2.3 million employees in 1986 to 1.8 million employees in 2001. Reductions in the workforce are primarily the result of the changes in national security requirements after the dissolution of the Soviet Union and the end of the Cold War. Among civilian agencies, some agencies have seen an increase in employment while others have seen significant decreases. On balance, however, civilian agency employ-

[5] Under the schedule program, GSA negotiates contracts with vendors for a wide variety of mostly commercial-type products and services, and permits agencies to place orders under these contracts directly with the vendors. According to GSA, it takes 268 days to award a contract using traditional methods, but it takes only 15 days, on average, to place an order under the schedule program.

Figure 6



Source: Congressional Budget Office using data from the Office of Personnel Management.
Note: Totals are averages of monthly employment counts. Data cover all branches of government, but not the U.S. Postal Service.

ment has remained relatively stable, except for temporary increases due to census activities. Figure 6 compares civilian employment trends in defense and non-defense agencies. (Hiring by the new Transportation Security Agency is not included.)

As a general matter, downsizing was not guided by strategic planning, nor has adequate consideration been given to implementation challenges, such as the impact of the government's reduction-in-force rules. Overall, the government's human resources policies and practices have not reflected, nor been aligned with, current workforce dynamics and challenges, including demographics, professional development, mobility, and other issues.

In addition to an overall decline in the size of the federal workforce, the mix of job categories has changed. In particular, there has been a large reduction in federal civilian employment in blue-collar and clerical occupations. In 1986, employees in blue-collar occupations totaled about 400,000; by 2001, employment in such jobs had fallen to roughly half that level. Over the same period, employment in clerical jobs dropped from about 363,600

Table 5

Occupational Distribution of Federal Workers, 1986 and 2001

Occupational Group	Percentage of the Federal Workforce	
	1986	2001
White-Collar Workers		
Professional	18	23
Administrative	23	33
Technical	17	20
Clerical	19	8
Other	2	3
Subtotal	**80**	**87**
Blue Collar Workers	**20**	**13**
All Occupations	**100**	**100**

Source: Office of Personnel Management.
Note: Data covers employees in the Executive Branch with full-time work schedules.

to approximately 137,500. While some of this reduction may reflect outsourcing, some of it appears to reflect changes in the government's needs (for example, the decline in the use of secretarial services). In contrast, employment in other white-collar positions, such as professional, administrative, and technical, generally rose from 1986 to 2001. Table 5 shows the changes in the occupational distribution of the federal workforce.

After a decade of downsizing and curtailed investment, it is becoming increasingly clear that some agencies are at risk of not having enough of the right people with the right skills to manage government missions properly. Past downsizing efforts coupled with a continuing loss of government's more experienced workers have resulted in a huge knowledge drain. A significant part of the workforce is eligible to retire in the next few years, while the demand for skilled workers to manage and perform critical projects is growing.

The acquisition workforce is symptomatic of the broader human capital issues facing the federal government. Overall, the total number of acquisition personnel decreased 22 percent in the last decade. DOD bore the full brunt of this downsizing, going from 96,000 staff in 1991 to about 68,000 today. Figure 7 shows how the federal government's acquisition workforce has declined.

Addressing human capital issues is not just a matter of the size of the workforce. It is also a capacity issue. Today, it is critically important that federal agencies put a greater focus on human capital strategies to adequately meet the current and emerging needs of government and its citizens in the most effective, efficient, and economical manner possible. This will require increased emphasis on

training and development, particularly in the area of technology.

Developing and maintaining a skilled acquisition workforce is the critical first step in managing the more complex current procurement environment. Numerous inspector general and GAO reports have highlighted the need for federal agencies to improve their management of service contracts. Their capacity to conduct this critical function is at risk because of past inattention to broader strategic human capital management. GAO and others are concerned that federal agencies' human capital problems are eroding the ability of many agencies—and threaten the ability of others—to perform their missions economically, efficiently, and effectively.

Figure 7

Source: GAO analysis of data extracted from OPM's Central Personnel Data File using the following 14 occupation codes: 246, 346, 511, 1101, 1102, 1103, 1104, 1105, 1106, 1150, 1152, 1910, 2003, and 2010.

Note: Excludes USPS, Tennessee Valley Authority, and intelligence agencies.

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Section IV

The Panel's Review and Findings

Introduction

Section 832 of the National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106-398, required the Comptroller General of the United States to convene a panel of experts to study the policies and procedures governing the transfer of commercial activities for the federal government from performance by federal employees to performance by contractors. In particular, the Panel was to consider procedures for determining whether functions should continue to be performed by government personnel, and for comparing the cost of performance of functions by government personnel with the cost of the functions by contractors. The Panel also was directed to study the implementation by the Department of Defense of the FAIR Act and DOD procedures for public-private cost comparisons under OMB Circular A-76. The Panel was to consist of representatives from the Office of Management and Budget, the Department of Defense, federal labor organizations, and private industry. On April 22, 2001, Comptroller General David M. Walker announced the formation of the 12-member Commercial Activities Panel. See inside cover text box for composition of the Panel, Appendix J for Panelists' biographies, and Appendix A for the law requiring formation of the panel.

At its organizational meeting, the Commercial Activities Panel adopted a mission statement that stressed the need to balance the diverse and frequently divergent interests of the various constituencies represented. The mission of the Panel was to devise a set of recommendations that would improve the current sourcing framework and processes so that they reflect a balance among taxpayer interests, government needs, employee rights, and contractor concerns.

The Panel committed itself to recommending significant improvements over the status quo. To ensure a high level of support, the Panel decided that all findings and recommendations would require a two-thirds supermajority. All references in this report to the Panel's findings, conclusions, and recommendations reflect the views of at least the required two-thirds supermajority of the Panel. The Panel also decided that each Panel member would have the option of having a brief statement included in the report explaining the member's position on matters considered by the Panel.

The Commercial Activities Panel adopted a mission statement that stressed the need to balance the diverse and frequently divergent interests of the various constituencies represented.

Public Participation

The Panel used a variety of means to ensure maximum public participation in its work. Through an announcement in the *Federal Register,* the public was invited to suggest issues the Panel might wish to consider or to identify existing relevant reports. The Panel welcomed written comments from any source, and maintained an e-mail account for that purpose. The Panel is grateful for the many thoughtful and helpful comments it received, far too many to acknowledge individually.

The most visible effort by the Panel to seek public input and expand its knowl-

edge base consisted of three public hearings conducted during the summer of 2001. The Panel approached each hearing with a specific objective. See Appendix I for a brief summary of each of the hearings. Full transcripts are available at the "Commercial Activities Panel" link at www.gao.gov.

At the first public hearing, held in Washington, D.C., on June 11, the Panel sought to focus on the underlying principles that should govern any sourcing decision. The Panel heard repeatedly about the need for transparency, fairness, and accountability in this area. The Panel also heard about the importance of addressing sourcing decisions within the context of an organization's core mission, rather than view the decision simply as a way to reduce costs. Cost is important, the Panel was told, but it is not everything. For information on outsourcing decisions outside the federal government discussed at this hearing, see Appendix G.

Cost is important, the Panel was told, but it is not everything.

In Indianapolis, Indiana, on August 8, the Panel heard from representatives from several organizations that had taken different approaches to the sourcing issue. Among them were the Naval Air Warfare Center in Indianapolis, which used competitive privatization and reengineered its business processes to gain workshare and remain profitable, and the city of Indianapolis, which effectively used competition to greatly improve the delivery of essential services. The Panel heard considerable testimony in Indianapolis about the importance of labor/management cooperation to the success of sourcing decisions.

The Panel held its final public hearing on August 15, at Lackland Air Force Base in San Antonio, Texas. Lackland was in the midst of a cost comparison under Office of Management and Budget (OMB) Circular A-76, a study that had been underway for several years. Numerous witnesses from Lackland and other installations in the area expressed concerns about the process, including the time and effort required to complete the study, the difficulty of accurately accounting for costs, and alleged conflicts of interest. For more information on the Lackland study, see Appendix F.

Sourcing Principles

Based on the presentations at the public hearings, additional materials submitted by other interested parties, and extensive Panel discussions, the Panel developed a set of principles that it believes should guide sourcing policy. While each principle is important, no single principle stands alone. As such, the Panel adopted the principles as a package. It is the view of the Panel that federal sourcing and related policies should:

1. **Support agency missions, goals, and objectives.**

   Commentary: This principle highlights the need for a link between the missions, goals, and objectives of federal agencies and related sourcing policies.

2. **Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce.**

   Commentary: This principle underscores the importance of considering human capital concerns

in connection with the sourcing process. While it does not mean that agencies should refrain from outsourcing due to its impact on the affected employees, it does mean that the federal government's sourcing policies and practices should consider the potential impact on the government's ability to attract, motivate, retain, and reward a high-performing workforce both now and in the future. Regardless of the result of specific sourcing decisions, it is important for the workforce to know and believe that they will be viewed and treated as valuable assets. It is also important that the workforce receive adequate training to be effective in their current jobs and to be a valuable resource in the future.

3. **Recognize that inherently governmental and certain other functions should be performed by federal workers.**

   Commentary: Recognizing the difficulty of precisely defining "inherently governmental" and "certain other functions," there is widespread consensus that federal employees should perform certain types of work. OMB Directive 92-1 provides a framework for defining work that is clearly "inherently governmental" and the FAIR Act has helped to identify commercial work currently being performed by the government. It is clear that government workers need to perform certain warfighting, judicial, enforcement, regulatory, and policymaking functions, and the government may need to retain an in-house capability even in functions that are largely outsourced. Certain other capabilities, such as adequate acquisition skills to manage costs, quality, and performance and to be smart buyers of products and services, or other competencies such as those directly linked to national security, also must be retained in-house to help ensure effective mission execution.

4. **Create incentives and processes to foster high-performing, efficient and effective organizations throughout the federal government.**

   Commentary: This principle recognizes that historically it has primarily been when a government entity goes through a public-private competition that the government creates a "most efficient organization." Since such efforts can lead to significant savings and improved performance, they should not be limited to public-private competitions. Instead, the federal government needs to provide incentives for its employees, its managers, and its contractors to seek constantly to improve the economy, efficiency, and effectiveness of the delivery of government services through a variety of means, including competition, public-private partnerships, and enhanced worker-management cooperation.

5. **Be based on a clear, transparent, and consistently applied process.**

   Commentary: The use of a clear, transparent, and consistently applied process is key to ensuring the integrity of the process as well as to creating trust in the process on the part of those it most affects: federal

managers, users of the services, federal employees, the private sector, and the taxpayers.

6. **Avoid arbitrary full-time equivalent (FTE) or other arbitrary numerical goals.**

   Commentary: This principle reflects an overall concern about arbitrary numbers driving sourcing policy or specific sourcing decisions. The success of government programs should be measured by the results achieved in terms of providing value to the taxpayer, not the size of the in-house or contractor workforce. Any FTE or other numerical goals should be based on considered research and analysis. The use of arbitrary percentage or numerical targets can be counterproductive.

7. **Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles.**

   Commentary: Competitions, including public-private competitions, have been shown to produce significant cost savings for the government, regardless of whether a public or a private entity is selected. Competition also may encourage innovation and is key to continuously improving the quality of service delivery. While the government should not be required to conduct a competition open to both sectors merely because a service could be performed by either public or private sources, federal sourcing policies should reflect the potential benefits of competition, including competition between and within sectors. Criteria would need to be developed, consistent with these principles, to determine when sources in either sector will participate in competitions.

8. **Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible.**

   Commentary: This principle addresses key criteria for conducting competitions. Ineffective or inefficient competitions can undermine trust in the process. The result may be, for private firms, especially smaller businesses, an unwillingness to participate in expensive, drawn-out competitions; for federal workers, harm to morale from overly long competitions; for federal managers, reluctance to compete functions under their control; and for the users of services, lower performance levels and higher costs than necessary. Fairness is critical to protecting the integrity of the process and to creating and maintaining the trust of those most affected. Fairness requires that competing parties, both public and private, or their representatives, receive comparable treatment throughout the competition regarding, for example, access to relevant information and legal standing to challenge the way a competition has been conducted at all appropriate forums, including the General Accounting Office and the United States Court of Federal Claims.

9. **Ensure that competitions involve a process that considers both quality and cost factors.**

   Commentary: In making source selection decisions in public-private competitions: (a) cost must always be considered; (b) selection should be based on cost if offers are equivalent in terms of non-cost factors (for example, if they offer the same level of performance and quality); but (c) the government should not buy whatever services are least expensive, regardless of quality. Instead, public-private competitions should be structured to take into account the government's need for high-quality, reliable, and sustained performance, as well as cost efficiencies.

10. **Provide for accountability in connection with all sourcing decisions.**

    Commentary: Accountability serves to assure federal workers, the private sector, and the taxpayers that the sourcing process is efficient and effective. Accountability also protects the government's interest by ensuring that agencies receive what they are promised, in terms of both quality and cost, whether the work is performed by federal employees or by contractors. Accountability requires defined objectives, processes and controls for achieving those objectives, methods to track success or deviation from objectives, feedback to affected parties, and enforcement mechanisms to align desired objectives with actual performance. For example, accountability requires that all service providers irrespective of whether the functions are performed by federal workers or by contractors, adhere to procedures designed to track and control costs, including, where applicable, the Cost Accounting Standards. Accountability also would require strict enforcement of the Service Contract Act, including timely updates to wage determinations.

Application of the Principles to Assess the Current System

Positive Elements of Circular A-76

Despite the widespread criticism that the Panel heard about the conduct of cost comparisons under Circular A-76, there are certain areas in which the A-76 process fares reasonably well in terms of the Panel's principles. The Panel concluded that these elements need to be carefully considered and, where appropriate, retained in any changes to the commercial activity sourcing process. The A-76 process encourages federal activities to develop "most efficient organizations" designed to achieve efficiencies and promote higher levels of performance. The historic use of the Circular, its Supplemental Handbook, and the various Department of Defense reference tools has resulted in lessons learned that can be applied in future public-private competitions.

In terms of accountability, as is the case with all federal contracts, the A-76 process requires ensuring that, whichever side wins the cost comparison, steps are taken to ensure that the government actually receives what is promised; if accountability is not being ensured in practice (and the Panel heard widespread complaints that it is not), this may be due more to implementation deficiencies than to defects in the A-76 process.

Particularly for federal employees, the rules for public-private cost comparisons set out in Circular A-76 provide valuable protective elements. Federal employees' trust in the integrated source selection process recommended by the Panel will be measured, in part, based on whether the process provides the federal workforce appropriate rights and protections. Specifically:

- Circular A-76 ensures federal employees that their plan for a "most efficient organization" will be in the "final round." That is, the final decision in an A-76 cost comparison is always between an in-house plan and a private-sector proposal, which reassures federal employees that they will be given full and fair consideration.

- Circular A-76 provides a way to calculate the cost of performance by the public sector. While the Panel recognizes the criticism leveled at the costing process under Circular A-76, to a significant extent that criticism reflects the difficulties in agencies' accounting systems in general, and those difficulties are unlikely to be resolved through changes to the A-76 process. Pending long-term improvements in government cost accounting, greater emphasis in the interim on improved accounting practices through such means as activity-based costing could provide needed improvements in accounting for in-house operating costs. In the meantime, though, the A-76 Cost Comparison Handbook provides a way to calculate the cost of in-house performance and to compare that cost to the potential cost of performance by a contractor.

- Because the sourcing decision under Circular A-76 is based on a cost comparison, some view it as objective and therefore less open to an abuse of discretion by management. In the context of the distrust that often permeates the sourcing process, participants (particularly federal employees) often prefer a cost-only basis for a decision, rather than one that permits the exercise of discretion based on subjective factors.

Federal employees' trust in the integrated source selection process recommended by the Panel will be measured, in part, based on whether the process provides the federal workforce appropriate rights and protections.

Revisions to the Supplemental Handbook issued in March 1996 represent an effort to enable agencies to realize the perceived benefits, in the A-76 process, of the "best value" tradeoff techniques widely used in FAR Part 15 procurements. It reflects an effect to bring both quality and cost factors into consideration in sourcing decisions under Circular A-76, while ensuring that the final decision ultimately is based on cost.

- Under Circular A-76, federal employees currently performing work under study benefit from a conversion differential: unless contractor performance would save the government $10 million, or 10 percent of in-house personnel-

related costs (whichever is less), work will be retained in-house. (The same conversion differential applies to the private sector when there is work the government might wish to bring back in-house.)

- Circular A-76 provides a measure of accountability by allowing either the affected federal employees (or their representatives) or private-sector firms to appeal tentative cost decisions, or determinations to waive the cost comparison process. The Panel notes that agency appeal boards considering those challenges have demonstrated an effort to give the appeals fair consideration, and some appeals have been sustained.

- Where federal employees lose their jobs as a result of an A-76 decision to contract out their work, the employees receive certain protections, such as the right-of-first-refusal in terms of employment by the contractor.

On a more global level, the Panel is aware that, notwithstanding its flaws, Circular A-76 is a known process, at least within the Department of Defense. Any alternative competition process will need to overcome concern, particularly from federal employees, about its fairness, and will have to win a greater measure of trust from all concerned.

Criticisms of the A-76 Cost Comparison Process

From both the public and the private sides, there have been complaints that the A-76 cost comparison process is fundamentally flawed. Below are some of the key criticisms.

Both federal employees and private firms complain that the A-76 competition process does not meet the principles' standard of a clear, transparent, and consistently applied process.

1. Complicated Process

Both federal employees and private firms complain that the A-76 competition process does not meet the principles' standard of a clear, transparent, and consistently applied process. The fact that GAO has sustained half of the bid protests that it has decided involving cost comparisons under Circular A-76 is telling. It contrasts with a "sustain" rate of about 21 percent for GAO protests overall. (It should be kept in mind, though, that most A-76 decisions are not protested, just as most contract award decisions are not protested, and GAO has only decided about 20 A-76 protests in the past 3 years). [Appendix D summarizes recent GAO bid protest decisions involving Circular A-76.]

These sustained protests generally reflect only the errors made in favor of the government MEO since only the private-sector offeror has the right to protest to GAO. See Appendix C. While any public-private competition is by its nature challenging and open to some of the concerns that have been raised regarding the A-76 process, the high rate of successful A-76 protests suggests that agencies have a more difficult time applying the A-76 rules than they do applying the normal (i.e., FAR) acquisition

rules. At least in part this may be because the FAR rules are so much better known. While training could help overcome this lack of familiarity (and many agencies, particularly in the Department of Defense, have been working on A-76 training), the Panel notes that the FAR acquisition and source selection processes are already better known and better understood; they are in a sense a "common language" for procurements and source selections. The Panel recognizes, however, that any application of the FAR to competitions that include a public-sector offeror would require use of certain elements of the A-76 process and other adjustments, and thus to this extent would involve deviation from the ordinary FAR process.

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2. Inconsistent Application

Inconsistency in application has been a particular concern with the A-76 process. There has been concern about application of the Circular and the rules under the Supplemental Handbook being inconsistently applied between the services or even between bases within one of the services. The Panel notes that the Office of the Secretary of Defense has made considerable progress providing consistent guidance across DOD to supplement the Circular.

3. Unequal and Unfair

Both federal employees and private firms criticize the A-76 competition process as unequal and therefore unfair. In the Panel's view, wherever possible the sectors should be treated the same and compete under the same rules. That said, there are some areas where the public and private sectors might well be treated differently out of necessity, but still be treated fairly. In particular, the special rules used to calculate the cost of in-house performance, while substantially different from the cost and pricing rules that apply to private-sector competitors, are not unfair. Instead, they reflect a reasoned, if only partially successful, effort to calculate (in the context of inadequate systems) the direct and indirect costs of performing the work in house. In addition, while the conversion differential (10 percent of the incumbent's personnel costs, or $10 million, whichever is less) favors the incumbent (regardless of whether it is the public or the private sector) the Panel views that differential as a reasonable way, consistent with the principles, to take into account the disruption and risk entailed in converting between the public and private sectors.

Other instances of unequal treatment between the public and private sides in A-76 cost comparisons are harder to justify. Specifically, under Circular A-76, a team of government evaluators conducts a comparative assessment of private-sector proposals measured against

evaluation criteria set out in the solicitation, while the in-house plan (the MEO and the management plan) are assessed, typically by people who do not participate in the evaluation of the private-sector proposals, on a pass/fail basis to determine whether it satisfies the PWS. Having different people evaluate the two sides in a cost comparison against different criteria creates at least the risk that the same standards will not be applied equally to the two sides. The Panel notes that GAO has sustained protests where, in fact, it appears that the public and private sides were not held to the same standards.

4. **Inadequate Support for Employees**

The Panel heard concerns that federal employees risk being at an unfair disadvantage in a competition with the private sector. In particular, concern was raised that federal employees' efforts to put together a truly "most efficient organization" have sometimes been hamstrung by lack of cooperation or unwillingness to commit resources on the part of management. This alleged lack of cooperation included a failure to keep employees informed about the process, a lack of support for innovative suggestions from employees, an unwillingness to make the capital investments necessary to allow the in-house plan to win the cost comparison, and a failure to give the employees the tools (whether in terms of training or access to expertise) to conduct a thorough reengineering analysis of their work and to propose (and draft) a competitive plan. On the other hand, the Panel learned of

The Panel heard many complaints about conflicts of interest as the A-76 cost comparison process is applied.

agencies that provide support, including contracted support, to in-house teams preparing for A-76 cost comparisons. The Panel views it as critical to the perceived fairness of any competition involving federal employees that those employees be provided assistance so that the employees are not at an unfair competitive advantage vis-à-vis the private sector.

On a related point, federal employees preparing an MEO under the current A-76 rules are able to propose an arrangement that includes private-sector contractors as part of the MEO, which can be helpful to the federal employees. Under the current A-76 rules, however, the in-house team cannot team with a private-sector firm to propose an integrated public-private partnership. The Panel believes that public-private partnerships should be not only permitted, but encouraged, especially in situations requiring significant capital investment.

5. **Conflicts of Interest**

The Panel heard many complaints about conflicts of interest as the A-76 cost comparison process is applied. Federal employees expressed concern that federal managers, instead of being neutral in the public-private cost comparison, sometimes favor outsourcing and thus undermine the federal employees' efforts to retain

their jobs. Concern was raised in this regard about "revolving doors," where federal managers involved in the A-76 process move on to positions in private-sector firms that participate in those competitions. The private sector has raised numerous complaints, including in bid protests to GAO, alleging that individuals with a stake in the outcome of public-private competitions are being allowed to play a key role in those competitions. In the bid protest of DZS/Baker, GAO found that among the 16 Air Force employees who were evaluating private-sector proposals in an A-76 cost comparison at Wright-Patterson Air Force Base, 14 held positions in the function under study. (See Appendix D for a summary of this and other GAO bid protest decisions.) Perceptions of conflicts of interest risk undermining the sense of trust in the process, and it is important that they be addressed. The Panel notes that the Department of Defense and the Office of Management and Budget have taken steps, since the DZS/Baker decision was issued in 1999, to prevent similar conflicts of interest from arising. Despite this, concerns about conflicts of interest remain throughout the A-76 cost comparison process.

6. Cost/Technical Tradeoffs

The Panel heard many complaints, particularly from the private sector, that the March 1996 revisions to the A-76 Supplemental Handbook have created a process that is not working well. As noted above, in Section II, The Current Sourcing System, the March 1996 changes allowed the use of a "best value" tradeoff selection process among private-sector proposals. Under this approach, the "winning" proposal chosen for the public-private cost comparison might not be the least expensive private-sector proposal since a superior technical, but more expensive, approach could have been selected over a less expensive alternative. Yet the final evaluation between the government and the private sector is based exclusively on cost. There are numerous problems associated with this dual evaluation track that lie at the heart of many of the complaints, from private-sector offerors and from government managers, about the weaknesses of the A-76 process. For private offerors, many believe it denies them the benefits of their investment and commitment to innovation and technology.

Because of the importance of the tradeoff issue to the Panel's work, the Panel spent considerable time discussing and debating the advantages and disadvantages of tradeoffs, and addresses the issue in some detail here. Tradeoffs are routinely permitted in negotiated procurements, those acquisitions in which offers are evaluated against criteria in addition to cost or price. Since World War II, federal agencies have been allowed to use negotiated procurements, and thus tradeoffs between cost and non-cost factors, in certain acquisitions. At least since the late 1970s, negotiated procurements have been more common than sealed-bid acquisitions, in which price is the only criterion for selection among responsive offers. Under the Competition in Con-

tracting Act of 1984 (CICA) and the FAR, agencies are free to choose between negotiated procurements and sealed bid acquisitions. In the FAR, negotiated procurements are set out in Part 15. Not all negotiated procurements, however, allow tradeoffs. The solicitation in a Part 15 procurement will tell the offerors what the criteria for evaluation and award will be; they could be technical acceptability and low cost, or they could be a mix of comparatively evaluated factors, thus permitting a tradeoff. To summarize this brief description, federal agencies have for decades routinely used tradeoffs in negotiated procurements (often using the term "best value" to describe them), with the non-cost factors required to be identified in the solicitation. Among the most common non-cost factors are technical approach, past performance, and management plan.

Tradeoffs are routinely used in federal procurements conducted under the FAR, and they also reflect widespread practice by other governments (state, local, and foreign) as well as by the private sector. The tradeoff process entrusts federal employees acting as source selection officials with the authority to use their judgment in selecting among proposals offered. Tradeoffs are widely credited with getting the federal government past the "low bid" mentality of the past, and with increasing consideration of factors such as quality and past performance. While concern has sometimes been expressed that the tradeoff process allows federal employees awarding contracts very broad discretion, that discretion has boundaries: Award decisions must comply with pre-established evaluation criteria, and are subject to challenge if it appears they did not. In this regard, GAO considers bid protests challenging the way tradeoffs are conducted, and sustains protests where the process was unfair or unreasonable.

The process created in the March 1996 revisions to the A-76 Supplemental Handbook endeavors to capture the benefits of the tradeoff process, while maintaining the perceived objectivity of a cost-only selection. The March 1996 A-76 process requires the agency to measure the selected private-sector proposal against the MEO and to have the MEO adjusted if the two do not offer the same level of performance and quality; once the adjustment is made, a cost-only comparison is made to select the winner. That "leveling" process, which is not used in FAR procurements or in any other procurement system of which the Panel is aware, has not been easy for agencies to implement, and GAO has sustained protests where it was alleged that an agency failed to implement it fairly (or at all). The Panel notes that the Office of the

The process created in the March 1996 revisions to the A-76 Supplemental Handbook endeavors to capture the benefits of the tradeoff process, while maintaining the perceived objectivity of a cost-only selection.

Secretary of Defense has worked hard to provide clear guidance to the Department of Defense in this regard. Significant concerns also were raised about the unfairness that stems from leveling the public sector proposal with that of the private sector, including the risk of disclosure of intellectual property.

7. **Protest Rights**

The Panel heard frequent complaints from federal employees and their representatives about the inequality of protest rights. While both the public and the private sectors have the right to file appeals to agency appeal boards (and both sectors do), only the private sector has the right, if dissatisfied with the rulings of the agency appeal board, to go on to file a bid protest at GAO or in court. As explained in detail in Appendix C, both GAO and the Court of Appeals for the Federal Circuit have held that, under CICA, federal employees and their unions are not "interested parties" with standing to challenge the results of A-76 cost comparisons or the findings of agency appeal boards. The Panel views the protest process as one form of ensuring accountability to assure federal workers, the private sector, and the taxpayers that the competition process is working properly. While the Panel recognizes that there is equal access to the agency appeal process, the principle of fair treatment means that ultimately all parties to a competition should have rights as nearly equal as possible to challenge the way the competition was conducted. Granting protest rights, however, should be part of an effort to address the full range of issues related to competing for and performing government contracts.

8. **Time and Money**

The Panel also heard criticism that the A-76 cost comparison process takes too much time to complete. According to DOD, over the last 5 years, the average time to complete A-76 cost comparisons was 25 months. Most of this time (18 months) involved effort leading up to the issuance of the solicitation; from issuance of the solicitation to a tentative decision took an average of 7 months. The 25-month average does not account for any appeals or protests, which can lengthen the process considerably. Whether and to what extent FAR-based public-private competitions would be faster than A-76 cost comparisons is unknown. In terms of cost, however, the Panel heard testimony that some companies estimate the costs of participating in an A-76 cost comparison to be 50 to 75 percent higher than participating in a traditional FAR-based procurement. The Panel also heard that the additional cost in an A-76 cost comparison has a disproportional effect on small businesses.

Other Concerns

Beyond the specific criticisms of A-76 cost comparisons, one concern raised by several witnesses before the Panel, as well as by a number of Panelists, was that an agency always should strive to be the most efficient organization possible, and not wait until an A-76 cost comparison

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to begin those efforts. The Panel is convinced that the government needs incentives and processes that encourage both management and employees to develop high-performing and efficient organizations. These incentives and processes must be based on human capital strategies designed to attract, motivate, reward, and retain a high-performing workforce.

In the current environment and the foreseeable future, stability cannot be guaranteed by any institution, nor is it expected by most young people entering the job market today. The key to success is to adopt human resource practices that demonstrate clearly the employer's commitment to its workforce, even as competition for those resources is brought to bear. As such, government personnel policies and practices must be flexible to permit agencies to adapt to the kinds of innovative initiatives that are common today in the commercial sector, where stability is rare, the pressures of the marketplace are constant, and the competition for talent is fierce. Such practices include making significant investments in workforce professional and career development, rewarding performance, and, when alternative sourcing strategies are contemplated, ensuring that the workforce is provided adequate support to develop competitive proposals and is treated as an asset in the process (e.g., making the question of the workforce's future a source selection factor).

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Section V

Recommendations

The Panel adopts the following recommendations:

A. Adoption of Sourcing Principles.

The Panel unanimously recommends that all sourcing decisions be guided by the following principles and commentary. While each of the principles is important, no single principle stands alone. As such, the Panel adopted the principles as a package. The Panel believes that federal sourcing policies and practices should:

1. **Support agency missions, goals, and objectives.**

   Commentary: This principle highlights the need for a link between the missions, goals, and objectives of federal agencies and related sourcing policies.

2. **Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce.**

   Commentary: This principle underscores the importance of considering human capital concerns in connection with the sourcing process. While it does not mean that agencies should refrain from outsourcing due to its impact on the affected employees, it does mean that the federal government's sourcing policies and practices should consider the potential impact on the government's ability to attract, motivate, retain, and reward a high-performing workforce both now and in the future. Regardless of the result of specific sourcing decisions, it is important for the workforce to know and believe that they will be viewed and treated as valuable assets. It is also important that the workforce receive adequate training to be effective in their current jobs and to be a valuable resource in the future.

3. **Recognize that inherently governmental and certain other functions should be performed by federal workers.**

   Commentary: Recognizing the difficulty of precisely defining "inherently governmental" and "certain other functions," there is widespread consensus that federal employees should perform certain types of work. OMB Directive 92-1 provides a framework for defining work that is clearly "inherently governmental" and the FAIR Act has helped to identify commercial work currently being performed by the government. It is clear that government workers need to perform certain warfighting, judicial, enforcement, regulatory, and policymaking functions, and the government may need to retain an in-house capability even in functions that are largely outsourced. Certain other capabilities, such as adequate acquisition skills to manage costs, quality, and performance and to be smart buyers of products and services, or other competencies such as those directly linked to national security, also must be retained in-house to help ensure effective mission execution.

4. **Create incentives and processes to foster high-performing, efficient and effective organizations throughout the federal government.**

   Commentary: This principle recognizes that historically it has primarily been when a government entity goes through a public-private competition that the government creates a "most efficient organization." Since such efforts can lead to significant savings and improved performance, they should not be limited to public-private competitions. Instead, the federal government needs to provide incentives for its employees, its managers, and its contractors to seek constantly to improve the economy, efficiency, and effectiveness of the delivery of government services through a variety of means, including competition, public-private partnerships, and enhanced worker-management cooperation.

5. **Be based on a clear, transparent, and consistently applied process.**

   Commentary: The use of a clear, transparent, and consistently applied process is key to ensuring the integrity of the process as well as to creating trust in the process on the part of those it most affects: federal managers, users of the services, federal employees, the private sector, and the taxpayers.

6. **Avoid arbitrary full-time equivalent (FTE) or other arbitrary numerical goals.**

   Commentary: This principle reflects an overall concern about arbitrary numbers driving sourcing policy or specific sourcing decisions. The success of government programs should be measured by the results achieved in terms of providing value to the taxpayer, not the size of the in-house or contractor workforce. Any FTE or other numerical goals should be based on considered research and analysis. The use of arbitrary percentage or numerical targets can be counterproductive.

7. **Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles.**

   Commentary: Competitions, including public-private competitions, have been shown to produce significant cost savings for the government, regardless of whether a public or a private entity is selected. Competition also may encourage innovation and is key to improving the quality of service delivery. While the government should not be required to conduct a competition open to both sectors merely because a service could be performed by either public or private sources, federal sourcing policies should reflect the potential benefits of competition, including competition between and within sectors. Criteria would need to be developed, consistent with these principles, to determine when sources in either sector will participate in competitions.

8. **Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible.**

   Commentary: This principle addresses key criteria for conducting competitions. Ineffective or inefficient competitions can undermine trust in the process. The result may be, for private firms, especially smaller businesses, an unwillingness to participate in expensive, drawn-out competitions; for federal workers, harm to morale from overly long competitions; for federal managers, reluctance to compete functions under their control; and for the users of services, lower performance levels and higher costs than necessary. Fairness is critical to protecting the integrity of the process and to creating and maintaining the trust of those most affected. Fairness requires that competing parties, both public and private, or their representatives, receive comparable treatment throughout the competition regarding, for example, access to relevant information and legal standing to challenge the way a competition has been conducted at all appropriate forums, including the General Accounting Office and the United States Court of Federal Claims.

9. **Ensure that competitions involve a process that considers both quality and cost factors.**

   Commentary: In making source selection decisions in public-private competitions: (a) cost must always be considered; (b) selection should be based on cost if offers are equivalent in terms of non-cost factors (for example, if they offer the same level of performance and quality); but (c) the government should not buy whatever services are least expensive, regardless of quality. Instead, public-private competitions should be structured to take into account the government's need for high-quality reliable, and sustained performance, as well as cost efficiencies.

10. **Provide for accountability in connection with all sourcing decisions.**

    Commentary: Accountability serves to assure federal workers, the private sector, and the taxpayers that the sourcing process is efficient and effective. Accountability also protects the government's interest by ensuring that agencies receive what they are promised, in terms of both quality and cost, whether the work is performed by federal employees or by contractors. Accountability requires defined objectives, processes and controls for achieving those objectives, methods to track success or deviation from objectives, feedback to affected parties, and enforcement mechanisms to align desired objectives with actual performance. For example, accountability requires that all service providers, irrespective of whether the functions are performed by federal workers or by contractors, adhere to procedures designed to track and control costs, including, where applicable, the Cost Accounting Standards. Accountability also would require strict enforcement of the Service Contract Act, including timely updates to wage determinations.

A supermajority of the Panel adopts the following package of three additional recommendations:

B. Integrated Competition Process

The Panel concludes that the current sourcing system, including the A-76 process, is not consistent with its recommended principles. The Panel believes that all parties – taxpayers, agencies, employees, and contractors – would be better served by conducting public-private competitions under the framework of the Federal Acquisition Regulation. The Panel recommends, therefore, that the government take immediate steps to develop and demonstrate a process that uses the Federal Acquisition Regulation as the framework for conducting public-private competitions. The process should incorporate appropriate elements of the current A-76 system.

In essence, a public-sector proposal (which could provide for process improvements, as with MEOs under A-76) could be submitted in response to a broad range of agency solicitations, including in appropriate cases work currently contracted out and new work, and have the proposal evaluated under the same rules that apply to proposals from private-sector offerors. Although some changes in the process will be necessary to accommodate the public-sector proposal, the same basic rights and responsibilities would apply to both the private and the public sectors, including accountability for performance and the right to protest. This and perhaps other aspects of the integrated competition process would require changes to current law or regulation, and the Panel urges the Congress and the administration to begin work immediately toward that end. Although it is not clear whether and to what extent the integrated process will be faster than the A-76 cost comparison process, the Panel believes that the integrated process will be more consistent with its recommended principles. Because shifting to a FAR-type system will require a phased implementation approach, the Panel has crafted a suggested implementation strategy.

The end state should be integration of the needed elements of Circular A-76 and the "common language" of the FAR, so that there would be one integrated system, familiar to all participants, with rules that are well known, a process that is fair and transparent, and which provides for accountability.

The following key elements from the FAR, taken as a whole as part of an integrated process, would provide competition rules that are well known inside and outside government and are widely viewed as fair:

- Clear conflict of interest rules that apply to all offerors
- Statement of work (SOW) must be fair to all competitors and apply to all competitors equally
- Potential offerors can protest any SOW they believe unreasonably limits their ability to compete
- Proposal preparation rules apply to all competitors equally
- Evaluation criteria apply to all competitors equally
- Agency establishes and publicizes award criteria in advance

- Award criteria are to be selected to meet the agency's needs, and may be low-price/technically acceptable or cost/technical tradeoff
- Same evaluation team generally evaluates all competing proposals
- Proposals with no reasonable chance of being selected for award may be eliminated from consideration
- Discussions (if conducted) are held with all offerors whose proposals are believed to have a reasonable chance of being selected for award
- Unsuccessful offerors are entitled to a full debriefing
- Unsuccessful offerors have the right to file a protest at the contracting agency, GAO, or the Court of Federal Claims

The following elements from Circular A-76 cost comparison provisions would be used as part of the FAR-based process:

- The A-76 framework for calculating the in-house cost estimate until a new system is developed
- The right of employees to base their proposal on a more efficient organization, rather than the status quo
- The A-76 framework for calculating an "evaluated" price for private-sector proposals to take into account items such as contract administration costs
- The A-76 conversion differential factor (10 percent of in-house personnel costs or $10 million, whichever is less) would apply to whichever sector is currently performing the work, and would not be applied between offerors from the same sector (so that it would not apply between two private-sector proposals), and would not apply in cases of an offer by an entity other than the incumbent government entity (i.e., the government offer comes not from the incumbent organization, but from a different government entity seeking to take on the work).

In addition, the Panel recommends certain special provisions be adopted:

- Where there is a federal workforce currently performing, there should be a guarantee that the in-house proposal will not be eliminated from consideration (that is, eliminated from the competitive range) without at least one round of discussions. The Panel believes that fairness dictates an incumbent workforce be given an opportunity to correct deficiencies in its initial offer. To ensure that all offerors are treated equitably, the Panel recommends that at least one round of discussions be conducted with all offerors if the initial in-house offer does not lie within the competitive range. Those discussions would be conducted under FAR Part 15 rules, so that conducting discussions with the in-house team would require parallel discussions raising any concerns regarding other proposals.
- Selection of an in-house offer should lead to the execution of a binding performance agreement. While that agreement will not be identical to a

contract, care should be taken to ensure that it is as similar as practicable to one. In particular, the consequences of failure to perform in accordance with the in-house offer should lead to consequences comparable to those that can follow from a private firm's default on a contract, including recompetition of the work.

- The Panel recommends that arrangements be encouraged under which in-house employees can enjoy the equivalent of "award fees" in situations comparable to those (such as where performance exceeds certain measures) where private contractors could receive such fees.

- The Panel recommends that the protection that Circular A-76 affords to federal employees displaced as a result of an A-76 cost comparison be strengthened for FAR-based competitions. One way to provide that protection would be to use the benefits offered to incumbent federal employees, such as a "right of first refusal" or separation packages, as an evaluation criterion for private-sector proposals. Protection for displaced federal employees is particularly important for Civil Service Retirement System (CSRS) employees, who may face pension benefit portability issues.

- There should be explicit permission given for public-private partnerships as potential offerors.

In addition, it is important to ensure the following:

- As with "most efficient organizations" under A-76, federal employees should be able to propose process improvements and efficiencies and be supported in that effort. Federal employees involved in submission of an in-house offer also should receive assistance in planning for a competition, preparing a proposal, conducting discussions, attending a debriefing, and filing a protest.

- In-house teams receive reasonable consideration and support from management in their efforts to participate in competitions:

  - Where there is an in-house workforce currently performing, it would be expected that management generally will authorize in-house submission of a proposal, which includes commitment of resources for a proposal with a reasonable prospect of award (which may include increasing staff or making capital investments).

  - Where there is no in-house workforce currently performing the work, management would need to apply transparent criteria (such as whether excess capacity exists) in deciding whether to authorize submission of an in-house offer.

C. Limited Changes to OMB Circular A-76

To address a number of inequities, the Panel recommends several limited improvements in the current A-76 process that can be implemented expeditiously and would not require legislation.

These changes are intended to provide for more accurate cost comparisons, to enhance accountability, and to ensure greater fairness for all parties concerned.

- Ensure high-level commitment and leadership from top management in agencies to ensure that the process receives adequate, sustained attention and resources.
- Encourage use of government-wide "lessons learned" and knowledge-sharing mechanisms comparable to the tools that the Department of Defense has developed.
- Encourage more communication to federal employees and to private industry throughout the A-76 process.
- Ensure that all competitors have access to all relevant information, including workload data, in order to promote credible proposals.
- Encourage greater labor/management cooperation throughout the A-76 process.
- Make available, as appropriate, technical and other assistance in structuring the most efficient organization, as well as centralized teams of trained personnel to conduct the cost comparisons.
- Strengthen conflict of interest rules to increase trust in the process on the part of both federal employees and private firms.
- Ensure that, within the teams assessing compliance with the performance work statement requirements on the part of the MEO and private-sector proposals, there is at least one individual (and preferably a single evaluation team) who will have reviewed both the MEO and private-sector proposals.
- Require that in-house cost estimates be audited by independent agencies, as Department of Defense components are now doing.
- Consider application of Department of Defense A-76 Costing Model government-wide.
- Establish binding performance agreements for successful MEOs.
- In calculating the cost of contract administrators to be added to a private-sector proposal's cost, consider adopting government-wide the Department of Defense's method for estimating the number and grade level of contract administrators.
- Encourage the development and use of activity-based costing or other financial accounting system that will provide for the identification and accumulation of government costs.
- Improve accountability by enforcing the existing requirement that agencies conduct performance reviews on at least 20 percent of the MEOs and ensuring that all contracts are properly administered.

D. High-Performing Organizations

The federal government should promote high-performing organizations as a standard business practice, independent of any sourcing decision. In this regard, the Panel recommends that the government take steps to encourage high-performing

organizations (HPOs) and continuous improvement throughout the federal government. In particular, the Panel recommends that the Administration develop a process to be used to select a limited number of functions currently performed by federal employees to become HPOs, and then evaluate their performance. As to those functions, authorized HPOs would be exempt from competitive sourcing studies for a designated period of time. Overall, however, the HPO process is intended to be used in addition to and/or in conjunction with, not in lieu of, public-private competitions.

Successful implementation of the HPO concept will require a high degree of cooperation between labor and management, as well as a firm commitment by agencies to provide sufficient resources for training and technical assistance. In addition, a portion of any savings realized by the HPO should be available to reinvest in continuing reengineering efforts and for the HPO to use for further training and/or for incentive purposes. There are a variety of approaches for implementing the HPO concept. While the Panel is not recommending the use of any particular approach, Appendix B outlines one possibility.

OMB should develop and oversee the implementation of a FAR-type, integrated competition process.

Implementation Strategy

Many of the Panel's recommendations can be accomplished administratively under existing law, and the Panel recommends that they be implemented as soon as it is practical to do so. The Panel recognizes, however, that some of its recommendations would require changes in statutes or regulations, and that making the necessary changes could take some time. Moreover, although the Panel views the use of a FAR-type process for conducting public-private competitions as the desired end state, the Panel also recognizes that some elements of its recommendations are new for the federal government and therefore need to be demonstrated and then refined based on experience. For these reasons, the Panel recommends a phased implementation strategy as follows.

A-76 studies currently underway or initiated during the near term should continue under the current framework. Subsequent studies should be conducted in accordance with the improvements to the A-76 process recommended by the Panel.

OMB should develop and oversee the implementation of a FAR-type, integrated competition process. In order to permit this to move forward expeditiously, it may be advisable to limit the new process initially to agencies where, except for allowing protests by federal employess, its use would not require legislation, that is, civilian agencies. Statutory provisions applying only to defense agencies may require repeal or amendment before the new process could be used effectively at the Department of Defense, and the Panel recommends that any legislation needed to accommodate the integrated process in DOD be enacted as soon as possible.

As part of a phased implementation and evaluation process, the Panel recommends that the integrated competition process be used in a variety of agencies and in meaningful numbers across a broad range

of activities, including those currently performed by federal employees, work currently performed by contractors, and new work. Within 1 year of initial implementation of the new process, and again 1 year later, the Director of OMB should submit a detailed report to the Congress identifying the costs of implementing the new process, any savings expected to be achieved, expected gains in efficiency or effectiveness of agency programs, the impact on affected federal employees, and any lessons learned as a result of the use of this process, together with any recommendations for appropriate legislation. The GAO would review each of these OMB reports and provide its independent assessment to the Congress. The Panel anticipates that OMB would use the results of its reviews to make any needed "mid-course corrections."

Based on the results generated during the evaluation period, and on the reports submitted by OMB and GAO, Congress will be in a position to determine the need for any additional legislation.

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Section VI

Views of Individual Panelists

Section VI contains the individual statements of Panel members in the following order:

David M. Walker, Chairman

E. C. "Pete" Aldridge, Jr.

Frank A. Camm, Jr.

Mark C. Filteau

Stephen Goldsmith

Bobby L. Harnage, Sr.

Kay Coles James

Colleen M. Kelly

Senator David Pryor

Stan Z. Soloway

Angela B. Styles

Robert M. Tobias

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STATEMENT OF DAVID M. WALKER, CHAIRMAN

The Commercial Activities Panel faced a challenging task. The mandate the Congress gave the Panel–to recommend changes in the policies and procedures governing the transfer of commercial activities from government personnel to private-sector contractors–presents a range of thorny issues the Congress and the executive branch have wrestled with for at least 40 years. Given the complexity of the issues and the diversity of the views represented on the Panel, all of us were well aware, from the start of our deliberations, that there are no easy fixes and that it was highly unlikely that a consensus on these issues would be reached.

In light of the challenges it faced, I think that the Panel's achievements are remarkable. The ten guiding principles adopted unanimously by the Panel should provide a strong conceptual framework and specific criteria against which to measure any proposals for change in the government's competitive sourcing policies. In this regard, I believe it is important for the Administration to move expeditiously to assure that all of its actions are consistent with these principles. In addition, any related congressional actions should be designed to be consistent with these principles.

While I also would have preferred unanimous support for the additional Panel recommendations, those recommendations received the support of at least a supermajority of the Panel. Based upon discussions during the Panel's meetings and my conversations with individual Panel members, it is evident to me that despite the lack of unanimity, there is a considerable amount of agreement, and where differences exist, clear philosophical and policy choices are apparent. For example, one key difference relates to the basis on which the new FAR-based approach for conducting public-private competitions would be implemented and the number of times Congress should be required to act in connection with this new process. I joined with a super-majority of the Panel in recommending that the new process be implemented as quickly as possible, combined with a reasonable demonstration period and periodic evaluation reports by OMB and GAO which would be made available to the Congress. The philosophical nature and small number of these differences should help to facilitate more timely and effective consideration of our recommendations by the Congress and the Administration in deciding what course of action is most appropriate. In this regard, any legislative changes should be approached in a comprehensive and considered manner rather than a piecemeal fashion in order for a reasonable balance to be achieved.

Overall, I believe that the findings and recommendations contained in the Panel's report represent a reasoned, reasonable, fair, and balanced approach to addressing this important, sensitive, and complex area. The recommendations also represent a significant improvement over the status quo. I hope that the Congress and the Administration will consider and act on this report and its recommendations in a timely manner.

Statement of E.C. "Pete" Aldridge, Jr.

I commend the activities of the Commercial Activities Panel (CAP) in attempting to improve the process used to source federal functions judged able to be performed in the private sector. This is a difficult issue in trying to balance the policy of the government not to compete with the private sector in performing non-government activities, and the rights of the federal employees whose jobs could be in jeopardy as a result. A-76 is an attempt to balance the policy of the government and the rights of the employees by permitting government employees to compete with the private sector for jobs judged to be available for both. However, we cannot give more rights to federal employees than we give to the employees of the private sector companies competing for this work. This inherent conflict is the foundation of problems with the A-76 process and the reason the CAP was chartered.

The Department of Defense is committed to improving the efficiency of its operations and ensuring that its resources are allocated to the highest priority activities. Accordingly, DoD intends to go beyond the A-76 competitions to determine how non-core functions of the Department should best be performed including competitive sourcing, re-engineering, divestiture, privatization, public-private partnerships and public-private competitions.

I fully support the recommendations of the CAP Report, especially the fundamental "principles" that should be inherent in any public-private competition, whether under a modified A-76 process or an adaptation of the Federal Acquisition Regulations (FAR). I believe the FAR, proven to be effective in the vast majority of all competitive acquisitions, should be the single basis for all future competitions, whether they be for private-private or public-private competitions. We should move to this standard as quickly as possible.

Statement of Frank A. Camm, Jr.

We should focus on fundamental change. I read the Panel's central findings like this:

- Public-private competition has improved the provision of government services for many years. We should continue to use it aggressively as a performance tool.

- Despite its considerable past success, A-76 is becoming less and less compatible with federal procurement policy in general; with broader efforts to reinvent government; with best commercial make-or-buy practices; and with exemplar agreements on make-or-buy decisions between major American unions and corporations. Broad and growing discontent with A-76 reflects the fact that it is falling behind the times.

- Looking forward, A-76 lacks the flexibility required to tailor federal make-or-buy decisions to the goals of the agencies making these decisions. A-76 cannot accommodate increasingly common methods used not only to cut agency costs but also to improve performance. It cannot accommodate sourcing criteria, like past performance and technical capability, needed to pick the best source for an activity and to drive the source's performance. It cannot accommodate public-private partnerships or labor-management agreements tailored to local circumstances. It limits federal workers' chances to learn about innovations in the commercial sector.

- Make-or-buy decisions managed under the Federal Acquisition Regulations (FAR) could provide flexibility to relieve these problems. At least as important, the FAR could support continuing improvement of federal make-or-buy decisions as labor and management work together to discover new ways to pursue mutual interests in a framework common to all federal procurement. The FAR is the dominant framework for making federal sourcing decisions today. We have extensive experience with it in private-private competitions. The Department of Defense has also applied it to public-private competitions, including over 70 competitions in a congressional test program during 1991-93. This experience will help quickly shape policy that uses the FAR to provide a broad framework for federal make-or-buy decisions. When this occurs, the FAR will provide one language for making all federal sourcing decisions.

My priorities for implementation differ from those in the Panel's report. To ensure success, I prefer focusing senior leadership efforts to improve federal sourcing policy on one primary goal—implementing a new integrated competition process that works.

Because this new process will replace A-76 cost comparisons in just a few years, I cannot justify investing much leadership attention or many resources to improve A-76. HPOs are obviously worth longer-term attention. But the Panel did not succeed to defining them well enough to allow a quick start. Asking an HPO to "operate almost as a virtual corporation," for example, asks the impossible. In time, I am sure that we can build HPOs around less ambitious, enforceable performance agreements between government buyers and sellers. In fact, I expect the new integrated competition process to teach us how to do this routinely. Certainly, methods used in performance-based make-or-buy decisions have helped commercial firms improve oversight of all their internal sources. Improving how we conduct public-private competitions will lead us in the right direction.

Statement of Mark C. Filteau
President, Johnson Controls World Services, Inc.

The Commercial Activities Panel received valuable input, deliberated at length and ultimately made a number of significant recommendations. The most important and fundamental recommendation is summed up on page 10 of the report.

> "The Panel believes that in order to promote a more level playing field on which to conduct public-private competitions, the government needs to shift, as rapidly as possible, to a FAR-type process under which all parties compete under the same set of rules."

Shifting competitive sourcing to a FAR-type approach is a logical move to a process that is fair and time-tested with clear rules. It has the confidence of both the government and industry. Unlike the current A-76 process, the FAR offers a well-documented process that is fully understood by procurement officials as well as a broad base of large and small contractors. This high level of confidence, combined with a time-tested process, will be the key to encouraging high quality competitive proposals for government commercial activities.

However, it should be noted that shifting to a FAR-type process is not a cure to all the problems facing competitive sourcing. Significant issues remain.

- Cost comparisons between public and private sector bids will continue to demand careful scrutiny and fairness. Public and private cost proposals should be evaluated under the same standards and by the same source selection group.

- Conflicts of interest within the government have been a serious issue under A-76 and the subject of several important GAO protests and DOD policy memos. Public-private competitions under a FAR-type process, that allow for negotiated best value decisions, open new dangers for conflicts of interest for source selection personnel. The government must remain attentive to potential conflicts of interest.

- Improvement is needed in developing quality statements of work, the heart of the RFP. In addition, all competitors should be ensured equal access to relevant information, including workload data, in order to make credible proposals.

Finally, the 10 Principles unanimously adopted by the Panel are fundamental to sourcing policy and should guide changes to be made as to how and when to conduct public-private competitions. They are to be read and understood together, not selected individually. These basic Principles are well thought out, were thoroughly debated and are fair to all parties.

Fairness is crucial. We are challenged to create a process that treats public sector employees with respect and provides for a fair system under which all competitors, public and private alike, are judged under the same set of rules. The Panel's recommendations and principles live up to that challenge.

Statement of

Stephen Goldsmith
To accompany the
REPORT OF THE COMMERCIAL ACTIVITIES PANEL

This report is the product of diligent work by The Comptroller General and his staff and thoughtful deliberations by the Panel. The report sets out important principles which should be helpful in guiding the debate.

Agreement on these principles came through rational dialog and compromise by disparate interests. On one hand the parties and the Comptroller General should be complimented on their ability to secure these compromises. On the other hand the compromises diluted the imperative for change. Almost no one believes the current competitive sourcing process works as it should. Another school of public management experts agree both that attracting quality individuals into government is increasingly difficult and that current hierarchical systems often reduce efficacy and job satisfaction.

The Panel's report in this context is too cautious. The need to make sure that changes work well caused the Panel to spend too much time on what could go wrong and how to guard against it. The resulting recommendations then, though good, appear tentative. Today the lines between the sectors are not sharp, and the heads-I-win, tails-you-lose attitude, that the current process exemplifies, is increasing outdated. We should move much more rapidly to a system where the sectors work together, where the organization that can best produce a function does it.

My experience as Mayor of Indianapolis showed me that when done right public employees not only do not lose their jobs, they in fact end up doing jobs that add more public value and thus are more personally satisfying.

In this context, for example, the report encourages allowing public employees to protest adverse decisions. Of course the system should be symmetrical, with the protest rights similar for all participants. But speed and fairness can be accomplished at the same time. I think we demonstrated that with the privatization of the Indianapolis Naval Air Warfare Center. It is important that the protest and appeal rights be very carefully set up so that not every individual involved has standing, but rather organizations; and that administrative time limits and finality are clear. Similarly the report makes recommendations about cost accounting, which though relevant, again obscure the more important issue that government should be purchasing outputs or outcomes, whether dealing with internal or with external entities, and spend less time auditing inputs.

Today's system often penalizes taxpayers, private companies and public employees. We need change. The panel's recommendation's can set the stage but Congress, the President and OMB should be encouraged to accelerate the efforts toward accountability and performance contracting, understanding that competition brings out the best in all involved.

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Bobby L. Harnage, Sr.
National President

Jim Davis
National Secretary-Treasurer

Andrea E. Brooks
Director, Women's/
Fair Practices Departments

Dissenting View of Bobby L. Harnage Sr., National President

Although the Commercial Activities Panel was packed to give disproportionate weight to private contractors' interests, I joined with hope that many important issues would finally receive the consideration they deserve, including:

- The impact of excessive service contracting on military readiness,
- The role played by service contracting and in-house personnel ceilings in causing and perpetuating the government's "human capital crisis", which is particularly acute in the Department of Defense (DoD),
- The inability either to track the costs and savings associated with service contracting,
- The failure to track the cost and size of the service contractor workforce,
- The inability of DoD to determine the extent to which inherently governmental work has been contracted out,
- The refusal to consider public-private competition for new government work or currently outsourced work,
- The failure to allow federal employees to compete in defense of their own jobs,
- The impact of contracting out on workers' pay and benefits, and
- The failure to provide federal employees and their unions with the same appellate rights as contractors.

Unfortunately, the pro-contractor faction focused the panel's time and resources almost exclusively on one goal: To replace, "immediately," OMB Circular A-76 with an even more pro-contractor public-private competition process they call

"best value." It's referred to in the report as a Federal Acquisition Regulation (FAR)-based "cost / technical trade-off" approach.

In recommending the replacement of A-76 with the FAR, the pro-contractor faction of the panel took a position that was rejected even by the "acquisition reform"-minded Clinton Administration. In 1998, when contractors attempted the same maneuver, a senior OMB official wrote, emphatically, that the FAR was "not developed with public-private competitions in mind."

What motivates this rush to replace A-76? Contractors continue to be confounded that, despite all of their advantages, they lose 60% of all public-private competitions. Contractors can't win regularly when they compete on the basis of costs, the standard that is best for taxpayers. Rather than improving their efficiency, contractors have decided to change the rules of the game. They want to replace the current system with a subjective one that encourages agencies to make award decisions on the basis of projections and expectations, thereby significantly increasing the role of bias and politics. The subjective approach has been rejected repeatedly by both Republican and Democratic Administrations over the last 50 years. Indeed, thanks also to the vigilance of successive Congresses, Title 10 is replete with requirements that ensure that the government's service contracting decisions are cost-based.

Contractors want us to believe that the current system does not allow for due consideration of qualitative factors. That is false. The truth is that A-76 has its own "best value" process that can be used to bring about improvements in quality, while ensuring that, ultimately, sourcing decisions are made in the best interests of taxpayers. And that is why the Clinton Administration blocked earlier efforts to impose a FAR-based process on public-private competition.

The dangerous subjectivity inherent in a FAR-based "best value" system not only tips the scales even further in favor of contractors in making award decisions; it can even be used by contractors to prevent federal employees from entering the competition. Under FAR, as the panel's pro-contractor faction admits, federal employees can be barred from competing in defense of their own jobs. Also, with FAR federal employees who meet the terms of a solicitation and submit a lower cost bid can be rejected in favor of a less responsive, more expensive contractor bid.

DoD's "human capital crisis" was the inevitable result of years of indiscriminate contracting out and thoughtless downsizing. But rather than establish safeguards to restrict the damaging practices that caused this crisis, the panel's pro-contractor faction appears determined to exacerbate it. Their recommended process has even more pro-contractor loopholes than the current process. At the same time, Pentagon officials have expressed an intention to contract out all work they consider "non-core" through "divestiture," a process of direct outsourcing or privatization that involves no public-private competition.

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The current A-76 competition process is not perfect. Yet any competition process would be a lightning rod for controversy. One-third of the panel supported an alternative proposal that would have established a real pilot program to test and evaluate alternatives to A-76, including FAR-based "best value." Given that the history of contracting is littered with blunders, AFGE believes that prudence requires us to look before we leap.

Unfortunately, the panel's pro-contractor faction never seriously considered our proposal to test alternatives to A-76. They insisted on an "immediate" replacement of the current process with an unproven and untested process, one that the report acknowledges will be no faster or simpler than the current process. If they truly believed that their alternative were superior to A-76, I have no doubt that the eight members of the panel's pro-contractor faction would have consented to a real pilot project. Instead, knowing that their alternative is a risky gamble and one that might not withstand scrutiny, they have decided to ask the Congress and OMB to ram it through without any prior testing or evaluation.

I am disappointed that the Panel's report excluded the text of an alternative approach, the Competition with Oversight, Responsibility and Equity (CORE) proposal, elements of which had the support of at least five panelists. The CORE proposal recommended public-private competition prior to outsourcing absent national security rationales, pilot projects for numerous alternatives to A-76, public-private competitions for new and contracted government work, tracking the cost and quality of contracted work, strengthening the civilian acquisition workforce, establishment of an equitable appeals process, a repudiation of arbitrary privatization quotas or FTE ceilings, elimination of incentives to outsource only to pay lower wages or benefits, and support of the Panel's own plan for HPO's.

The unions that represent the vast majority of the federal workforce are adamantly opposed to the recommendations in this report. Our worst fears about the panel have been confirmed. The recommendations in the report, if implemented, would do absolutely nothing to improve outsourcing policies, accountability to taxpayers, or the government's human capital crisis. Much worse, these recommendations would actually increase the potential for politics, conflicts of interest, as well as Enron-style waste, fraud and abuse in government sourcing.

Finally, although one-third of the panel opposed the report's recommendations, dissenters were given just 1,000 words apiece to explain their positions. For more information about AFGE's perspective, I must ask you to contact AFGE, at (202) 639-6419 (Media) or 202-639-6413 (Legislation), and visit AFGE's website www.afge.org.

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UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

OFFICE OF THE DIRECTOR

April 18, 2002

The Honorable David M. Walker
Comptroller General of the United States
General Accounting Office
Washington, DC 20548

Dear Mr. Walker:

It has been an honor for me to participate in the Commercial Activities Panel (CAP). I am pleased that the report of our deliberations to Congress makes clear the need for a uniform, government-wide competitive sourcing policy that is clear in its procedures, fair to all parties in its application, and acknowledges that the needs and concerns of the Federal workforce must be acknowledged and addressed for the process to work effectively.

I have been privileged in my career to work with the finest public servants, both in the Federal Government, and with the Commonwealth of Virginia. As a former human resources director, my paramount concern has always been, and will continue to be, the well being of employees and their families. Change is inevitable, even in the Federal workforce. But its impact on employees must always be minimized with effective use of tools presently available and the innovative development of additional tools where necessary.

It is clear to me from the work of the CAP that change in the present competitive sourcing policy of the Federal Government is necessary. But whatever form the Federal Government's competitive sourcing policy eventually takes, it is extremely important that the Federal workforce is prepared for competition with the private sector. The second sourcing principle adopted unanimously by the Commercial Activities Panel recognizes this fact. What this means is that managers and rank-and-file employees alike must be educated to fully understand the process and what is necessary to create an efficient organization capable of competing. Federal human resources experts must be involved in the process so that human capital needs are addressed. And, issues concerning those Federal employees displaced by the competitive process will need to be considered. OPM stands ready to assist in the effort to reform the Federal Government's sourcing policy.

OPM has traditionally provided Federal management and leadership training and continuing education through its Federal Executive Institute and Management Development Centers (MDCs). To support the Federal Government's sourcing policy, the MDCs offer a Competitive Sourcing Seminar for individuals who lead, manage and/or conduct competitive sourcing activities in agencies. In the program, best practice examples from other government agencies describe how to compete effectively with other organizations, whether public or private. This program addresses human capital, labor relations and socioeconomic issues related to successful

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agency sourcing. OPM can also design training that emphasizes more technical human resources issues such as managing employees displaced by the competitive process. Further, OPM has designed a specific program for those Government organizations whose primary mission includes providing reimbursable services to other Government organizations. These services can be expanded to include non-management employees.

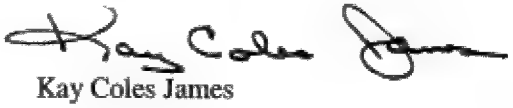
Through the Federal Executive Institute's Center for Executive Leadership and Management Development Centers' customized program services, OPM can work with agencies to design programs on competitive sourcing that cover specific human resources issues unique to an agency. Also, OPM can develop technology- and print-based training tools to help agencies, managers and employees prepare for competition and address human resources issues associated with competition and outsourcing.

Human resources issues associated with a competition itself also need to be addressed. OPM can provide guidance for human resources offices across Government to assist them in their involvement in public-private competitions. HR offices should be involved early in the competitive process and be a key participant from a managerial perspective, advising affected employees during the process, as well as assisting with *most efficient organization* (MEO) and/or *high performance organization* (HPO) development. OPM can provide guidance for how and when to perform market surveys to validate that skills are available in the public or private sector to sufficiently staff an MEO/HPO, and evaluate how new employees can be hired more quickly when necessary to staff an MEO/HPO.

For displaced Federal workers, OPM has a number of current programs and HR flexiblities that can assist in the transition, including training for promotion or placement in other positions. Agencies may train employees to meet the qualifications for other positions within the agency. Employees can also train for other positions outside the agency if the agency head determines that such training is in the best interest of the Government. In the past, OPM has implemented *Agency Reemployment Priority Lists*, which, when created, require agencies to choose an employee candidate from the list before it can hire from outside the Federal workforce. The *Interagency Career Transition Assistance Plan* (ICTAP) gives displaced Federal workers priority in jobs in other agencies, and Certificates of Expected Separation to employees who could be separated within 6 months, allowing them to register early for outplacement and training programs. Also available is the *Voluntary Early Retirement Authority* (VERA) for early retirement; the *Voluntary Separation Incentive Program* (VSIP) for buyouts; and severance pay.

As our nation and economy have changed over the years, so too has the nature of Federal employment. We can not guarantee a job for life. But we can, and should, strive to help employees acquire the skills they need for life. An educated and trained Federal workforce serves the best interests of our nation, and the best interests of Federal employees themselves. Regardless of what competitive sourcing process is eventually adopted, OPM stands ready to make sure that Federal employees are prepared, and that their needs and concerns are addressed. This report is only the beginning of a dialog on how the competitive sourcing process can be made more efficient. I commend you and your staff for your hard work and dedication to this effort, and look forward to working with you as we continue to pursue this objective.

Sincerely,



Kay Coles James
Director

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Dissenting Views on the Final Report of the Commercial Activities Panel

Colleen M. Kelley
National President, National Treasury Employees Union

I voted in opposition to the final recommendations included in the Report of the Commercial Activities Panel (CAP). While I did support the Report's ten principles, I did not feel the CAP Report's recommendations, taken as a whole, would improve current procedures and as a result I could not support them.

While I do believe the CAP Report recommends some important improvements in the current system, particularly within the ten principles, I feel the Panel missed an opportunity to make meaningful recommendations beyond the principles that could measurably improve the government's sourcing policies and procedures. Even though the Report's recommendations did secure the support of a majority of the Panel, it should not be overlooked that the members representing federal employees voted against the recommendations.

When the Panel first met in May of 2001, I set a very basic litmus test in order to vote for the final Report: I needed to feel that the Report's recommendations would improve the federal government's commercial activity sourcing system for federal employees and the American taxpayers. Unfortunately, the final Report does not pass this test.

After listening to witnesses at the Panel's public hearings and hearing the views of other Panel members, I began to work with my colleagues to evaluate the current sourcing problems and prioritize the suggested changes. These deliberations led to the development of a reasonable package of changes that would improve the integrity of the sourcing process, while putting the interests of the taxpayers ahead of anything else. That work resulted in what is called the CORE Proposal. The Core Proposal is a set of recommendations that would track the true costs of contracting activities, ensure full and fair public-private competition, empower agencies to engage in make-or-buy decisions, establish an equitable appellate process, and foster the development of high performing government organizations, while still retaining sufficient management discretion. While the CORE Proposal did not include everything I felt would be necessary to make the optimum system for federal employees, the CORE Proposal would make real improvements in the current system and better serve the taxpayers, while satisfying the needs of agencies, government employees, and government contractors. In fact, many of the Panel members expressed support for different elements of the CORE Proposal and some of the changes were actually incorporated into the CAP Report. However, key components of the CORE Proposal are absent from the final Report, and as a result, the final CAP recommendations fall short. While the Panel could not reach agreement on all of the elements of the CORE Proposal, I am hopeful Congress will recognize the benefits of this commonsense approach, and will choose to implement the CORE recommendations. The CORE Proposal can be found on NTEU's website at www.nteu.org.

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With recent accounting scandals rocking both the private and public sectors, no change in the sourcing process is more important than the implementation of meaningful government-wide systems to better track the costs and performance of federal contractors. Unfortunately, agencies do not have the staffing or systems in place to monitor the work of contractors. It seems that once a contractor gets a contract, that work is out the door and rarely - if ever - scrutinized again. For example, just last year we learned that Mellon Bank, a contractor hired by the Internal Revenue Service, lost, shredded, and removed 70,000 taxpayer checks worth $1.2 billion in revenues for the U.S. Treasury. While this contract eventually was terminated, there can be no justification for the fact that thousands of taxpayer checks were disposed of before the problem was detected. If agencies had better tracking systems and more contract oversight staff, the fraud – and the losses to the taxpayers – resulting from this contracting fiasco could have been halted much sooner. Federal employees are heavily scrutinized through checks and balances in the Civil Service system, the FAIR Act, the Government Performance and Results Act, and the budget process. Taxpayers and federal employees deserve the same level of accountability from contractors. While the CAP Report identifies problems with contractor oversight, there are no specific meaningful recommendations.

Next, if agencies are going to consider contracting out government work, NTEU feels strongly that federal employees should always be given an opportunity to compete in defense of their jobs. Unfortunately, as long as direct conversions of government work to private contractors without competition are allowed, agencies will find ways to privatize government activities without first giving federal employees an opportunity to prove they can do the job better for a lower cost. Especially in light of the Administration's arbitrary outsourcing quotas, which require agencies to open up to the private sector 425,000 government jobs, agencies will default to direct conversion authority under pressure to meet the quotas. While the CAP Report highlights concerns about arbitrary outsourcing quotas and indicates support for competition, the Report fails to ensure fair competition for federal employees before their jobs are contracted out.

NTEU also has serious misgivings about moving full speed ahead, as the CAP Report recommends, with a new untested FAR-based integrated competition process, when we have no evidence that indicates this new source selection process will be any more efficient, cost effective or expeditious. Any new revolutionary government service delivery system that will determine the expenditure of hundreds of billions of taxpayer dollars ought to be tested on a limited basis, independently reviewed, and modified based on lessons learned. Then if Congress sees the alternative as superior to A-76, Congress should determine whether or not it should be authorized government-wide. Unfortunately, the CAP Report sets this untested program in autopilot mode, with a very limited role for Congress.

Regardless of what sourcing system is utilized by agencies now or in the future, federal employees and their unions should have a right to challenge contract decisions just like contractors. Unfortunately, federal employees do not have standing to protest final contracting decisions outside their agency. Putting the taxpayers first means giving federal employees an opportunity to speak up when they believe the taxpayers have gotten a bad deal. The best way to ensure there is a judicial check for the taxpayers against fraudulent contract awards or a faulty source selection process is to give the federal employees most directly affected by contracting out decisions the opportunity to challenge those decisions before GAO or the Federal Courts. The CAP Report recommends giving federal employees some opportunities to protest sourcing decisions outside their agency, but it does not go far enough.

Before contracting out more government work, the government needs to take a step back and evaluate the costs, the quality and the risks involved in contracting out. Instead of rushing to contract out more government work, Congress and the Administration should make the necessary investments in increased agency staffing, resources, and better training, so that the taxpayers can be assured government services will be delivered by federal employees at even lower costs and increased efficiency than they are today. When supported with the tools and resources they need to do their jobs, there is no one who is more reliable and who can do the work of the federal government better than federal employees.

Statement of Senator David Pryor

I strongly support the sourcing principles adopted by the Panel. I also support the recommendations concerning changes to the A-76 process and the encouragement of high-performing organizations throughout the government.

I cannot support the Panel's recommendation regarding an integrated procurement process, however, and I join in the position articulated by Panel member Robert Tobias. To amplify that position further, I believe that Congress needs to play a more significant role in the process, especially at the end of any demonstration projects.

In my view, Congress should move with extreme caution in exercising its responsibility in this sensitive and crucial area. History teaches us that once Congress has delegated any of its powers, the need for oversight becomes paramount. Congress needs to ensure that its demand for accountability not be diminished.

I express my heartfelt thanks to Comptroller General David Walker for his uncompromising fairness and patience throughout this difficult and demanding process. He has been exceptional and has earned the respect and high esteem of each member of the Panel.

Likewise, the staff of the GAO has been unfailing in their assistance and commitment to this endeavor.

Statement of

STAN SOLOWAY
President, Professional Services Council

To accompany the
REPORT OF THE COMMERCIAL ACTIVITIES PANEL

The Comptroller General and his staff are to be commended by everyone associated with this important endeavor for their diligence and hard work. While this report is not the end of the debate, it offers important and meaningful recommendations; and it does so in a constructive and results-based context. Much of that would not have been possible without the Comptroller General's personal leadership. Clearly, the Panel members had to find ways to compromise in order to find appropriate solutions that balance the many interests involved. To that extent, the fact that a supermajority of the Panel agreed on all recommendations, and that the panel unanimously agreed on a balanced set of key sourcing principles, is significant.

Taken as a whole, this report helps place the debate in its proper context and offers a path to the development of sound sourcing policies for the federal government. As the report attests, the issue of competition and outsourcing is not one of judging people. Rather, it is one of achieving optimal performance, which is what the taxpayer rightfully demands, and doing so while also ensuring that dedicated employees in both the public and private sectors are treated as the assets they are.

Further, the report is clear that injecting competition into commercial government functions is not antithetical to the government's human capital challenges. The private sector has demonstrated how to win the battle for talent, in environments in which, as the report states, "stability is rare, the pressures of the marketplace are constant and competition for talent is fierce". Unfortunately, the government's human resources practices lag far behind many of the proven and successful models now common in the private sector. Identifying the link between sourcing and human capital issues represents one of the report's major contributions. Hopefully, this will help move the current debate from its current vitriolic state to a more constructive level.

In addition, by recommending a sourcing process in which all parties are treated equal, the Panel is sending the clear message that we must shift our collective focus from either defending or attacking a clearly flawed process to the more central question of how to deliver value and optimize performance.

Moreover, nothing in the report can or should be interpreted as suggesting any change in the government's 50-year-old policy of reliance on the competitive marketplace for the provision of goods and services. Indeed, the report's reference to permitting government entities to bid for already contracted or new work must be viewed in the context in which it was discussed and deliberately worded. For instance, such competitions might be appropriate for cases in which the government has excess capacity, and all the requisite skills, resources and capabilities to perform the work. In fact, given the report's emphasis on making sourcing decisions on a "strategic" basis, it is difficult to envision a government agency seeking to perform any work that is not core to its mission and/or inherently governmental. To do so would be to specifically violate the

principles unanimously agreed to by the panel. The Panel also unanimously agreed that whenever the government competes it should be under the same criteria and subject to the same responsibilities as the private sector.

Some of the most important findings of the report, individually and in the aggregate, merit specific mention.

- The Panel has firmly repudiated the basic tenets of the "TRAC Act". The report rejects mandating public-private competitions and "contractor head counting", both of which are major elements of the legislation.
- The current A-76 process is fatally flawed and cannot be "fixed". Times demand that the process be eliminated in favor of one based on the proven, better understood and fairer FAR.
- Delivering performance and value requires that competition be the norm for commercial activities being performed by the government just as it is already the norm for the private sector companies supporting the government.
- The government's and the taxpayer's interests would be best served if public-private competitions were conducted in a "best value" environment, as is the accepted norm today throughout the FAR-based federal procurement process.
- While the Panel recognizes the importance and challenges associated with sound contract management, we also recognize that the government's internal management, financial tracking, and personnel challenges are at least equally significant, and merit at least equal attention and recognition in the sourcing process.
- Downsizing in government has occurred primarily as the result of mission changes at DoD, and not as a result of outsourcing.
- The recommendations for change must be seen and treated as an integrated whole.

While these messages represent the core of the report, I do have concerns with the recommendations relative to HPOs. While the HPO concept reflects a sound management strategy, it is an entirely novel one for the government and should be selectively tested in small, discreet cases. Moreover, while the report references using HPOs for commercial activities, the concept is more appropriate for inherently governmental or "core" functions for which competition, the acknowledged best "tool" for driving optimal performance, is not available.

This report is based on extensive input from stakeholders, reflects careful analysis and deliberation, addresses many of the concerns raised by all parties, and provides a balanced set of recommendations to move the process forward. With proper focus and attention, there is no reason these recommendations cannot be fully implemented within the next 18 months. I thus encourage the Administration and, where appropriate, Congress, to move expeditiously to make these recommendations a reality.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

April 17, 2002

The Honorable David M. Walker
Comptroller General
General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Walker:

I would like to thank you, the other panel members, and the General Accounting Office for the significant time and effort committed to this panel. With few exceptions, the report outlines a measured and constructive proposal for improving the performance and effectiveness of the Federal Government through public-private competition. My only serious reservation about the report relates to the recommendations for High Performing Organizations (HPO).

The panel presented an extraordinary opportunity through which diverse representatives found significant common ground, culminating in a 12-0 vote for the sourcing principles. I also commend the willingness of the four panel members that did not vote in favor of the final report to seriously and thoughtfully consider significant changes to the process for public-private competition. Indeed, I agreed with several elements of the counter proposals initiated by these panel members.

As the report recognizes, the Federal Government has spent little time managing resources to determine if the same or a higher quality service can be provided to our citizens at a lower cost. As of June 2000, there were 850,000 people in the Federal Government performing jobs that are commercial in nature – jobs that people also perform in the private sector. Despite the fact that many of these jobs are as basic as mowing the lawn or serving food, few of these jobs have been exposed to the rigors of competition.

Consistent with the panel report, this Administration has strongly encouraged competition for the performance of government activities that are commercial in nature. As part of the President's Management Agenda, agencies have been asked to build the infrastructure necessary to conduct public-private competition. The aggregate government-wide goal, established at the outset of the initiative, envisions the competition of 425,000 jobs (50 percent of commercial FTEs). Recognizing the need for significant analysis and review to establish individual agency competition plans, no time-frame has been established for the achievement of this long-term goal. Instead, OMB

established a two-year goal to compete 127,500 jobs (15 percent of commercial FTEs). To reach this goal, each agency was asked to submit a plan to compete 5 percent in fiscal year 2002 and 10 percent in fiscal year 2003, representing a modest level of competition deemed necessary for the creation of an infrastructure for public-private competition at each individual agency.

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From the OMB perspective, this 15 percent goal was never considered an inflexible or arbitrary mandate. Indeed, after extensive review of agency competition plans and significant agency consultation, OMB approved several agency plans for less than 15 percent competition, focusing on agencies that had experienced significant FTE cuts or high service contracting to FTE ratios. As part of this process, OMB also asked several agencies to consider appropriate opportunities for in-house organizations to compete for work currently under contract with the private sector.

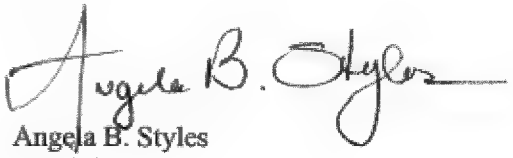
OMB fully supports the principle articulated in this report that federal sourcing policy should avoid arbitrary FTE and other numerical goals. To clarify in words what has been a reality in practice at OMB, we will revise our criteria for success in the Administration's competitive sourcing initiative to recognize that some agencies will build a significant infrastructure for public-private competition over the next two years without competing 15 percent of commercial FTEs. Moreover, OMB will revise the criteria for success to require agency competition plans to include the following elements: (1) a timeline for conducting public-private competitions; (2) a reasonable balance between competitions and direct conversions; and (3) the consideration of opportunities to allow the public sector to compete for new work and work currently performed by the private sector.

While focusing on competition, we have been quick to acknowledge that the current structure for public-private competition needs significant revision. We look forward to expeditiously implementing an integrated and faster competition process as envisioned by this report. The focus of our implementation will be changes that streamline the process. It is simply unacceptable that the average timeframe for public-private competition currently exceeds 24 months. Delay hurts the entire process.

Finally, with regard to the HPO recommendations, I believe we should make significant efforts to require *all* federal providers of services to become as efficient as possible as fast as possible. However, I have serious concerns that agencies would use this HPO proposal to avoid competition. Moreover, I believe the concept, in practice, would be almost impossible to implement.

This report, coupled with the Administration's commitment to competition, lays the groundwork for improved mission performance through the provision of quality service at the lowest possible cost. Not unlike any other effort that seeks to fundamentally transform the way we do business, we will face significant challenges implementing and building on the recommendations contained in this report. But by remaining steadfast in our commitment to competition, which lies at the heart of this report and the Administration's competitive sourcing initiative, we will improve the delivery of the quality service taxpayers deserve.

Sincerely,



Angela B. Styles
Administrator

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Comments by Robert M. Tobias on the Report of the Commercial Activities Panel

The Report makes three recommendations that I support: a set of principles to guide legislators and regulators when creating a process for and making sourcing decisions; improvements in the administration of the A-76 process; and support for the creation of High Performing Organizations. Each of the recommendations is extremely important and should be implemented immediately.

I respectfully disagree with the Report's conclusion "that the current sourcing system, including the A-76 process, is not consistent with [the] recommended principles" and the Report 's recommendation that " . . . all parties? taxpayers, agencies, employees and contractors? would be better served by conducting public-private competitions using the framework of the Federal Acquisition Regulations [FAR]." The conclusion and recommendation are based on assumptions without data. The recommendation assumes that combining the existing FAR source selection process with a portion of the A-76 revised Supplemental Handbook into a "FAR-type" process will produce better product at less cost than does a modified A-76 process also recommended in the Report. Based on this unsupported assumption, the Report recommends that a "FAR-type" process be implemented immediately in the civilian agencies and in the Department of Defense after Congress enacts enabling legislation.

Creating and implementing a new process in the annual $109 billion - and growing - service contacting arena should be based on data, not assumptions. A "FAR-type" system has the significant risk of introducing unpredictable subjectivity, reducing the importance of competitive cost comparisons, and eliminating the public sector option from the final decision-making process.

Congress has the responsibility to demand data before it makes a decision that a "FAR-type" process serves the public better than a modified A-76 process. Congress should enact streamlined demonstration project authority giving the Office of Management and Budget (OMB) the responsibility to conduct experiments that compare the modified A-76 process with a "FAR-type" process to determine which produces better results. The Report's recommendation that a "FAR-type" process be immediately implemented should be rejected for the following reasons:

1. There is not one scintilla of evidence that a "FAR-type" process will be faster or produce a better product at less cost. Giving the decision-maker the authority to make decisions on factors other than cost does not guarantee better decisions, and in fact opens the door for preconceived outcomes based on subjective factors such as "technical approach, past performance, and management plan;" factors not easily compared in public-private competition.

2. The Panel criticizes the existing A-76 process because it requires that the public and private proposals be compared in terms of the cost of "quality, innovation, flexibility, and reliability." The current A-76 process does not preclude a consideration of these factors, as is often erroneously stated, but it does require that the cost of providing the service be calculated and compared.

   It is not old fashioned to be concerned with cost. The private sector may not use "external/internal cost comparisons" as the Report suggests, but private sector decisions are subject to the discipline of the market. Since there is no analogous discipline in the public sector, cost - including the cost of quality, innovation, flexibility, and reliability - should be calculated and compared to ensure discipline in decision making in the public sector.

3. There is no evidence that a "FAR-type" process will reduce the time necessary to conduct a public-private competition. And the modifications to the existing A-76 process recommended by the Panel are targeted to further streamline it.

   The Report points out that it takes approximately seven months to complete the A-76 cost comparison process. This piece of hard data is contrary to the unverified assertions of many critics of the A-76 process that it takes significantly longer than the FAR process. Data debunked the myth.

4. As a justification for recommending a "FAR-type" process, the Panel concludes that the existing A-76 process is "fundamentally flawed." An examination of the listed "flaws" reveals that A-76 is not "fundamentally flawed" - it is fundamentally different. The "flaws" identified ? inconsistent application, inconsistent proposal application, conflicts of interest concerning who makes final decisions - are real but fixable. The "flaws" do not concern A-76 policy. They reflect how agencies implement the A-76 process. And the Report identifies the "fixes" needed and states that they should be implemented immediately.

   Item 6 merely identifies the fundamental difference between the modified A-76 and "FAR-type" process. It reiterates the Panel's assumption that a "FAR-type" process will yield a better product at less cost than a modified A-76 process. The majority's assertion may be true, but may also be false. It is an assumed, not a proved "fundamental flaw."

   Item 7, Protest Rights, points out that "employees and their unions" may not "challenge the results of A-76 cost comparisons or the findings of agency appeal boards." While this is true, the same is true for the "FAR-type" process proposed by the majority unless Congress changes the law to grant standing.

In short, the A-76 process is not "fundamentally flawed" as suggested in the Report. It is logically inconsistent for the Report to assert the "flaws" are so fundamental that a new process is required; yet, at the same time, that a "fix" for the existing process is possible. The revisions suggested by the Report should be tested against the untried, untested "FAR-type" process suggested in the Report before a decision is made.

In fact the available data reveals that of the 314 cost comparison decisions made by the Department of Defense from fiscal year 1997 through fiscal year 2001, only six were reversed on appeal and another four were overturned by GAO.

5. There is evidence that a "FAR-type" process will effectively eliminate a public alternative from the final decision making process. In a "FAR-type" process the decision maker may choose to give added points for "past performance" to a private offeror who has specifically performed the requested work. Even though the public offeror has been performing the work and now has excellent ideas about how to perform it more effectively and efficiently, because the public offeror is creating a new organizational entity to perform the work, it will not qualify for "past performance" points. As a result, the public offeror will not be a finalist for consideration. The decision maker will not be able to evaluate whether the institutional knowledge and new business practices created by the public offeror yield better value for the public. The existing and modified A-76 process preserves the option of a public offeror for consideration by the decision maker.

Which process is better should not be decided by debating. It should be based on an OMB test. The results, verified by the General Accounting Office, should be submitted to Congress and used to make a decision based on facts supported by data not hope; on results, not assertions. With so much at stake, data should determine the outcome.

Law Creating the
Commercial Activities Panel

Appendix A

Law Creating the Commercial Activities Panel

Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398

Sec. 832. Study of Policies and Procedures for Transfer of Commercial Activities.

(a) **GAO-Convened Panel**

The Comptroller General shall convene a panel of experts to study the policies and procedures governing the transfer of commercial activities for the Federal Government from Government personnel to a Federal contractor, including—

1. procedures for determining whether functions should continue to be performed by Government personnel;

2. procedures for comparing the costs of performance of functions by Government personnel and the costs of performance of such functions by Federal contractors;

3. implementation by the Department of Defense of the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501 note); and

4. procedures of the Department of Defense for public-private competitions pursuant to the Office of Management and Budget Circular A-76.

(b) **Composition of Panel**

(1) The Comptroller General shall appoint highly qualified and knowledgeable persons to serve on the panel and shall ensure that the following entities receive fair representation on the panel:

(A) The Department of Defense.

(B) Persons in private industry.

(C) Federal labor organizations.

(D) The Office of Management and Budget.

(2) For the purposes of the requirement for fair representation under paragraph (1), persons serving on the panel under subparagraph (C) of that paragraph shall not be counted as persons serving on the panel under subparagraph (A), (B), or (D) of that paragraph.

(c) **Chairman**

The Comptroller General, or an individual within the General Accounting Office designated by the Comptroller General, shall be the chairman of the panel.

(d) **Participation by Other Interested Parties**

The chairman shall ensure that all interested parties, including individuals who are not represented on the panel who are officers or employees of the United States, persons in private industry, or representatives of Federal labor organizations, have the opportunity to submit information and views on the matters being studied by the panel.

(e) **Information from Agencies**

The panel may request directly from any department or agency of the United States any information that the panel considers necessary to carry out a meaningful study of the policies and procedures described in subsection (a), including the Office of Management and Budget Circular A-76 process. To the extent consistent with applicable laws and regulations, the head of such department or agency shall furnish the requested information to the panel.

(f) **Report**

Not later than May 1, 2002, the Comptroller General shall submit the report of the panel on the results of the study to Congress, including recommended changes with respect to implementation of policies and enactment of legislation.

(g) **Definition**

In this section, the term 'Federal labor organization' has the meaning given the term 'labor organization' in section 7103(a)(4) of title 5, United States Code.

High-Performing Organizations

Proposal

Take steps to encourage high-performing organizations (HPO) and continuous improvement throughout the federal government.

Details

Management and employees would identify selected existing business areas or functions as possible candidates to become HPOs. While this concept has the potential to be applied broadly throughout the federal government, the initial focus could be on areas and/or functions where potential commercial options exist. Either management or employees could nominate a function as an HPO, but both sides would have to agree in order to proceed. Authorized HPOs would be exempt from competitive sourcing studies for a designated period of time. The exemption could be extended if the HPO continues to meet performance goals, revised periodically, as appropriate. Overall, the HPO process should be used in conjunction with, not in lieu of, public-private competition. The agency would make available a portion of any savings realized by the HPO for reinvestment in continuing reengineering efforts and for the HPO to use for training or incentive purposes.

Incentives are necessary to encourage both employees and management to seek and promote the creation of an HPO, and to ensure that neither side unreasonably declines to cooperate in this endeavor. For example, if employees pass up an opportunity to become an HPO, the organization might be subject to an immediate competition that could lead to outsourcing. For management, an agency or other appropriate entity (e.g., OMB) could make the establishment of HPOs a specific performance goal, and would hold managers accountable for meeting the goal as a component of their performance measurement and reward package. In addition, an independent person or entity could serve as an appeal authority if one side felt the other side was not acting in good faith.

Becoming an HPO

The program would begin with a window of opportunity (or open season) for organizations or functions to volunteer to become HPOs. Depending on available resources and other considerations, some agencies might decide to open the window of opportunity for one or more functions within the agency. Agencies would be permitted to sponsor HPO candidates comprising a limited number of functions. The size and scope of any particular HPO would vary by the number of its functions, activities, and locations. The primary focus could be on functions and activities that are commercial in nature. In selecting HPO candidates, a high degree of cooperation between labor and management would increase the potential for success.

Organizations or functions identified as HPO candidates would get a reasonable period of time, perhaps 6 months to 1 year, to develop an HPO plan. HPO candidates would have access to a range of financial and consulting resources for developing their plans. Funding would be an agency responsibility. The aggregate cost of funding these consulting services would be repaid over time by retaining a portion of the savings realized by successful HPOs. The concept assumes that a successful HPO would be able to measure financial performance.

After the organization develops an HPO plan it would submit the plan to an ad hoc interagency group for review. This group might consist of representatives from OMB, OPM, and perhaps other agencies with expertise in evaluating high-performing organizations, both in the federal government and elsewhere. The purpose of the review would be to assess the adequacy of the HPO, provide advice and guidance, and ensure some degree of consistency across the government.

HPO Performance

Once approved by the interagency group, the HPO would enter into a binding performance agreement. The agreement would prescribe specific objectives to be achieved by the HPO over the specified performance period. For example, the agreement might provide that by the end of the first year, the HPO would take the steps necessary to realize a savings of 20% over the average cost of performing the function during the previous 3 years, while achieving stated quality standards and non-financial performance goals. Management and employees would have to agree on the costing methodology to establish the baseline. The agency would have to account for realized savings, after adjustment for inflation, over the life of the agreement. The agreement also could establish a target of attracting a specified amount of outside capital, through public-private partnerships or otherwise. The agreement might also identify certain process improvements that the organization must achieve (e.g., decreasing the average time to respond to a citizen inquiry).

There would be periodic reviews, at least annually, of the performance of the HPO against the performance targets. An HPO that meets the goals would be exempt from competition for a period of time, perhaps 3 to 5 years. At the end of this period, and assuming the HPO is meeting its goals, the HPO could be eligible for an extension. Any additional performance period would require the HPO to meet additional savings and/or performance targets, consistent with the agency's current mission. On the other hand, failure to meet the targets, or perhaps an overwhelming percentage of the targets, would result in a cure notice giving the HPO a short period (perhaps 6 months) to meet the targets or risk termination of the agreement. Disputes concerning whether the targets have been met could be referred to an independent authority for review. If the agreement is terminated, or once the agreement has expired in accordance with its terms, the function(s) would immediately become subject to competition.

Special Considerations

Implementation of the HPO concept would require a number of accommodations. First, there is a need for additional flexibility in some of the government's personnel rules. For example, employees who help to create savings for the agency should be allowed to participate in a bonus pay pool funded through a portion of the savings. Employees of HPOs or HPO candidate entities who are adversely affected by a reorganization, and possibly a FAR-based competition, should receive preferential job reassignment and preferential job training within the agency or elsewhere in the government, and possibly other assistance (e.g., extended insurance coverage periods). Second, federal agencies whose approval might be required to implement the

HPO should agree to expedite the approval process. Third, the business case model should consider total expected costs over a reasonable period of time based on a present value cash-flow analysis. Agencies could use approved HPOs as pilots in connection with any alternative way of handling capital investments.

Appendix C

Standing to Challenge Public-Private Cost Comparisons

The Commercial Activities Panel frequently heard concerns expressed about the ability to challenge the results of public-private cost comparisons conducted under Office of Management and Budget (OMB) Circular A-76. In particular, several witnesses appearing in hearings before the Panel raised the issue of standing—that is, who is allowed to file a complaint—to challenge the results of those cost comparisons. This appendix provides a brief overview of the standing issue.

Circular A-76 provides a way for federal employees and their unions as well as private-sector participants to challenge the results and waivers of public-private A-76 cost comparisons. The Circular provides that affected federal employees and their representatives, as well as private firms that have submitted offers in an A-76 procurement, are entitled to file appeals challenging waivers or the results of A-76 cost comparisons to an agency appeal authority. This appendix, therefore, concerns only standing to file challenges after exhaustion of that agency appeal process.

General Accounting Office

The General Accounting Office (GAO) hears bid protests by private-sector firms that have participated in A-76 cost comparisons. These challenges are heard pursuant to GAO's bid protest authority, set out in the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-56 (2000).

CICA codified GAO's previous regulatory rule that only an "interested party" may file a protest. GAO's interested party requirement is the functional equivalent of the standing requirement that courts use. Specifically, CICA defines "interested party" as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or the failure to award the contract."[1] Because a private firm that participated in an A-76 cost comparison is an actual "offeror whose direct economic interest would be affected by the award of the contract or the failure to award the contract," that firm clearly meets the "interested party" definition, and is therefore allowed to initiate a bid protest at GAO. In fact, firms have filed more than 30 bid protests at GAO over the past 3 years to challenge the conduct of A-76 procurements. GAO will only hear a protest if a solicitation actually has been issued. GAO will not consider a private-sector protest alleging that an agency should issue a solicitation and conduct an A-76 cost comparison. The protests GAO has considered have challenged various aspects of A-76 procurements, including allegedly restrictive terms of a solicitation, the results of a private-private competition, alleged conflicts of interests on the part of government evaluators, and the conduct of a public-private cost comparison. Where the private-sector firm is protesting the outcome of the public-private cost comparison, GAO generally requires that the firm first go through the agency appeal process before GAO will consider the case.

GAO has consistently found that federal employees and unions cannot protest agencies' conduct of A-76 procurements, whether to challenge the results of the public-private cost comparison or any other aspect of the procurement. GAO has found that federal employees and unions do not meet CICA's definition of an "interested party," so that GAO does not

[1] 31 U.S.C. §§ 3551(2), 3552.

have authority to consider their protests. In American Fed'n of Gov't Employees, AFL-CIO; American Fed'n of Gov't Employees, AFL-CIO, Local 987; Laverne J. Rucker; Gary Fowler; Donald E. Thompson; Larry Baines (AFGE), GAO provided a detailed explanation of the analysis that led it to conclude that the protesters (unions and federal employees challenging an agency's decision to contract with a private-sector offeror as the result of an A-76 cost comparison) were not "interested parties" eligible to protest.[2]

Specifically, in AFGE, GAO noted that Federal Acquisition Regulation (FAR) § 2.101 defines "offer" as "a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract." The term "contract" is in turn defined as "a mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them." GAO explained that, accordingly, in order to be considered an offeror, the government's submission to perform the services in-house on behalf of the most efficient organization (MEO) would have to constitute an "offer," that is, be in response to a solicitation and constitute something that if accepted by the agency, would result in a contract binding the MEO to perform the services required.

The AFGE decision noted that if a cost comparison conducted under Circular A-76 results in the determination that the activities should be performed in-house using government facilities and personnel, the solicitation issued to the private-sector offerors is canceled, and the agency implements the MEO. No contract is awarded (under the solicitation or otherwise) for the performance of the required activities. As such, nothing submitted on behalf of the MEO, such as the government's in-house plan, can properly be considered an "offer."[3] GAO thus concluded that no individual or entity associated with the proposed performance of the required services in-house could be considered an "offeror," so that they cannot be considered interested parties eligible to protest under CICA.

Courts

Private firms have filed complaints in the Court of Federal Claims challenging the conduct of A-76 cost comparisons, and (although apparently fewer than five suits have been filed in the past 3 years) there appears to be no doubt that the private firms have standing to sue. Similarly, while few, if any, complaints have been filed in any other courts challenging A-76 cost comparisons, lack of standing does not appear to be the reason.

With respect to the right of federal employees and/or their unions to challenge A-76 cost comparisons, courts, with one exception of limited signifi-

[2] B-282904.2, June 7, 2000, 2000 CPD ¶87.

[3] GAO also noted that because the government's in-house management plan is prepared in response to the agency's performance work statement, rather than in response to a solicitation, the management plan does not fall within the definition of "offer" as set forth in FAR § 2.101 (an offer is a "response to a solicitation").

cance, have not allowed such challenges to proceed.[4] The most recent—and the controlling—decision in this area is Am. Fed'n of Gov't Employees, AFL-CIO v. United States, 258 F.3d 1294 (Fed. Cir. 2001).[5] That decision by the United States Court of Appeals for the Federal Circuit affirmed, on different grounds, the decision of the United States Court of Federal Claims that unions and federal employees are not interested parties eligible to protest a decision under Circular A-76 to contract out. See Am. Fed'n of Gov't Employees, AFL-CIO v. United States, 46 Fed. Cl. 586 (2000).

In that case, two federal employees and their union (the plaintiffs) filed an action in the Court of Federal Claims challenging the propriety of an agency's cost comparison that led to the determination that it would be more economical to contract with a private firm to perform the work. Specifically, the plaintiffs argued that the agency's decision violated certain provisions of Circular A-76, the Federal Activities Inventory Reform Act of 1998 (31 U.S.C. § 501 note (2000)), and 10 U.S.C. § 2462(b) (2000).

The Court of Federal Claims found that the plaintiffs were not "interested parties" under the Tucker Act, as amended by the Administrative Dispute Resolution Act of 1996 (ADRA), 28 U.S.C. § 1491(b)(1) (2000).[6] The Court of Appeals for the Federal Circuit affirmed the Court of Federal Claims' decision that the federal employees and their union lacked standing, but on different grounds. In this regard, the Federal Circuit found that "interested party" should be defined under ADRA in the same manner as in CICA—that is, the Federal Circuit ruled that the same statutory definition that governs interested party status at GAO also governs

[4] For an example of another court finding that federal employees and their unions lack standing to challenge A-76 decisions, see Nat'l Fed'n of Fed. Employees v. Cheney, 883 F.2d 1038 (D.C. Cir. 1989). The exception noted in the text: One United States District Court found, in a memorandum opinion and order, that the federal employee plaintiffs had standing to challenge the conduct of a public-private cost comparison. Diebold v. United States, Civ. C90-0001-L(A) (W.D. Ky. Apr. 2, 1993). This 9-year old, unpublished decision from a district court has limited significance, particularly because, since January 1, 2001, the sole federal court with jurisdiction to hear bid protests is the Court of Federal Claims. Pub. L. No. 104-320, § 12(d) (1996), see 28 U.S.C. § 1491(b).

In a recent memorandum opinion, the District Court for the District of Columbia found that the federal employee plaintiffs and their union had standing to challenge the "direct conversion" of work from the public to the private sector, where the conversion was accomplished under Section 8014(3) of the Department of Defense Appropriations Act, 2000, Pub. L. No. 106-79, 113 Stat. 1212, 1234 (2000). Am. Fed'n of Gov't Employees, AFL-CIO v. United States, No. 00-0936 (RMU) (D.D.C. Mar. 29, 2002). Section 8014(3) of the Act provides that the restrictions on "direct conversions" set forth at 10 U.S.C. § 2461 (2000) do not apply where, as in the case before the court, a contract for the work is to be awarded to "a qualified firm under 51 percent Native American ownership."

[5] The Federal Circuit decision is controlling both because that court is the appellate forum for the Court of Federal Claims and because, as noted above, no other federal court any longer has jurisdiction over bid protests.

[6] The court noted that the term "interested party" is not defined by the Tucker Act, which, as amended by the ADRA, gives the court jurisdiction over bid protest cases. The court found that standing before it was not limited to parties who were "interested parties" as that term is defined in CICA, but rather also included parties who would have standing to challenge the award of a procurement decision in federal district court under the Administrative Procedures Act (APA), 5 U.S.C. § 702 (2000). (It is on this point that the Federal Circuit disagreed with the Court of Federal Claims.) The Court of Federal Claims nevertheless ultimately dismissed the action, finding that the plaintiffs were not interested parties under the ADRA, and lacked standing to challenge the alleged violations of the Circular and the statutes because they were not within the "zone of interests to be protected or regulated by the statute... in question." Am. Fed'n of Gov't Employees, AFL-CIO v. United States, 46 Fed. Cl. at 600; see Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co., 522 U.S. 479, 488 (1998).

standing at the Court of Federal Claims. Effectively agreeing with GAO's interpretation of CICA, the Federal Circuit concluded that, because the federal employees and their union were not actual or prospective bidders or offerors, they did not have standing to challenge the agency's determination to contract for services rather than retain performance of the services in-house.[7]

Conclusions

With the issuance of the Federal Circuit's recent Am. Fed'n of Gov't Employees, AFL-CIO v. United States decision, the Court of Federal Claims was directed to look to the same definition (the CICA definition) that governs GAO in deciding who is entitled to file court challenges to A-76 cost comparisons. Because of how the term "interested party" is defined in CICA, neither GAO nor the Court of Federal Claims has the statutory authority to consider protests filed by federal employees or their unions challenging an agency's determination, based upon the results of an A-76 cost comparison, to contract for services rather than perform the services in-house. Of course, federal employees and their unions continue to be authorized to challenge A-76 decisions through the agency appeal process.

If a decision were made to permit public-sector bid protests and court challenges in the context of the integrated competition process, the question of who would have representational capacity to file such a protest would have to be carefully considered.

In addition to the standing issue, there is the question of attorney representation and the expense of litigation. In both the courts and GAO, those challenging A-76 decisions have been represented by counsel. Retaining counsel is generally critical to the ability to meaningfully litigate these cases. The record in A-76 procurements (as in most procurements) typically contains a large amount of nonpublic information, which GAO and the court will allow counsel, but not the clients, to see. Further, in order for counsel to gain access to the nonpublic parts of the record, they must submit an application and sign a nondisclosure agreement, in which the attorneys provide assurance that they are not involved in competitive decision-making for their clients. Retaining counsel obviously entails considerable expense. At GAO (but not the courts), protest costs, including attorney fees, are generally reimbursed to successful protesters. If federal employees and/or their unions are permitted to file protests at GAO and complaints in the Court of Federal Claims, they will presumably need to hire counsel, so the question of who will cover the expense of litigation, including attorney fees, could have considerable practical importance.

Finally, changing the standing rules alone may not permit federal employees to challenge cost comparisons in federal court because the employees' suit also would have to meet the constitutional requirement for a "case or controversy" between two adverse parties. While the Panel did not explore this issue and expresses no view as to it, some have questioned whether the "case or controversy" requirement would be met.

[7] The Supreme Court denied the union/federal employees' request that it review the Court of Appeals for the Federal Circuit's decision. 122 S. Ct. 920 (2002).

Appendix D

Recent GAO Bid Protest Decisions Concerning A-76 Studies

Under the Competition in Contracting Act of 1984, GAO provides an objective, independent, and impartial forum for the resolution of disputes concerning the awards of federal contracts. In deciding bid protests, GAO considers whether federal agencies have complied with statutes and regulations controlling government procurements. GAO has issued a number of bid protest decisions concerning cost comparisons conducted pursuant to Office of Management and Budget (OMB) Circular A-76. Generally, those decisions have identified five areas of concern:

(1) whether the performance work statement (PWS) clearly states the agency's actual needs;

(2) whether the in-house plan to perform the work satisfies the PWS requirements;

(3) where the private-sector offeror is selected on the basis of best value, whether the in-house plan will meet the level of performance and quality of the private-sector offer;

(4) whether there is a conflict of interest, or the appearance of a conflict of interest, that provides the in-house commercial activity team with an unfair competitive advantage or that calls into the question the objectivity of government evaluators or reviewers; and

(5) whether the agency fairly and realistically accounted for the costs that are the basis of the cost comparison between the in-house cost estimate and the private-sector offer.

This narrative describes generally each of these areas of concern. Following the narrative is a list of the recent GAO protest decisions concerning A-76 studies.

Identifying the PWS Requirements

The PWS defines the scope of the work to be performed.[1] To preserve the integrity of the cost comparison, private-sector offerors and the government must compete on the same scope of work.[2] Because the PWS states the minimum requirements that private-sector offers and the in-house plan must satisfy, it is critical that the PWS unambiguously state the agency's actual needs. Nevertheless, GAO has found in a number of cases that the PWS did not reflect the agency's actual needs. For example, in *BAE Systems*,[3] GAO found, among other things, that the in-house plan to operate one office to provide personal property shipment services did not satisfy a PWS requirement that two offices be operated at different locations to provide those services. In the course of the protest, though, it became clear that the agency might not need to staff two offices. Accordingly, GAO recommended that the agency consider whether the PWS reflected its actual needs in this regard. Similarly, in *Aberdeen Technical Services*, although the PWS required a full-time, dedicated program manager, the agency contended that it did not need a full-time, dedicated program manager. GAO recommended that the agency amend the PWS, if this requirement did not reflect the agency's actual needs.

[1] OMB Circular No. A-76 Revised Supplemental Handbook (RSH), append. I, Definition of Terms, at 36.

[2] RSH, part I, ch. 3, ¶ H.3.e.

[3] This decision, along with others mentioned in this discussion, is included in the list of cases following the narrative.

Satisfying the PWS Requirements

As noted above, private-sector offerors and the government must propose a way to satisfy the PWS requirements. Nevertheless, in a number of cases, GAO found that the in-house plan for government performance did not satisfy the minimum PWS requirements. In *Trajen, Inc.*, the record did not support the agency's determination that the in-house plan provided for satisfying a PWS requirement for spot painting. In *Rice Services, Ltd.*, GAO found that the agency's undocumented "assumptions" were insufficient to demonstrate that the in-house plan for government performance would satisfy the PWS requirements. In *BAE Systems*, GAO found that the PWS was materially amended after the government's in-house plan for performance was sealed, and the agency did not ensure that the in-house plan satisfied the revised PWS requirements.

Leveling the Playing Field

Where a solicitation invites private-sector offerors to exceed the PWS requirements and provides for the selection of the successful private-sector offer on the basis of a cost/technical tradeoff, the agency is required to ensure that the in-house plan will offer a comparable level of performance and performance quality.[4] Under these circumstances, the agency must account for strengths in the selected private-sector offer (that is, areas where the offer exceeds the PWS requirements) and make changes in the in-house plan necessary to raise its performance and performance quality to the level offered by the selected private-sector offer. In *The Jones/Hill Joint Venture—Costs*, GAO found that this obligation was not satisfied by accepting without adequate analysis claims of the in-house study team that in-house government performance would achieve a comparable level of performance and performance quality and by failing to consider strengths identified in the private-sector proposal during the best value competition. Similarly, in *DynCorp Technical Services LLC*, the requirement for a "level playing field" was not satisfied, GAO found, where the agency accepted an accelerated schedule submitted by the successful private-sector offer (which was encouraged by the solicitation) but allowed the in-house plan to satisfy the slower PWS schedule requirements. In that case, GAO found that the agency's generalized comparison of quality did not satisfy the requirement to ensure that the in-house plan would offer a level of performance comparable to that of the selected private sector proposal.

Conflict of Interest

Under the Federal Acquisition Regulation, the government, in conducting its business, is directed to act in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Thus, the general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in government-contractor relationships.[5] This rule is consistent with the guidance provided by OMB to provide a level playing field between public and private offerors to an A-76 cost comparison.

A conflict of interest or the appearance of a conflict of interest exists in an A-76 commercial activities study where a

[4] RSH, part I, ch. 3, ¶¶ H, J.

[5] Federal Acquisition Regulation § 3.101-1.

government evaluator holds a position that is within the scope of the study and is subject to being contracted out. In *DZS/Baker LLC; Morrison Knudsen Corporation*, GAO found that a substantial conflict of interest arose where 14 of 16 agency evaluators held positions under study and subject to being contracted out. GAO recommended that the agency appoint a new evaluation panel to evaluate private sector proposals. In *IT Facility Services—Joint Venture*, GAO found that an evaluator, whose spouse held a position under study that could be contracted out, had a conflict of interest. In the same case, GAO found that, even though 4 of 7 evaluation board members were employed in the areas under study, there was no conflict of interest where those evaluators' positions were not subject to being contracted out. The appearance of a conflict of interest has also been found in an A-76 commercial activities study where actions by agency employees and contractors working on the study arguably provide the in-house study team with unequal access to information that may provide the in-house team an unfair competitive advantage. Where the in-house team has in some sense set the ground rules for the competition, there may be an apparent conflict of interest suggesting that the in-house team, intentionally or not, may have skewed the competition in favor of the in-house team. Thus, in *The Jones/Hill Joint Venture*, GAO found a conflict of interest where an agency employee and a private-sector consultant employed by the agency wrote and edited both the PWS and the management plan for in-house performance. GAO's concern was that these actions arguably could have provided the in-house commercial activities team with unfair access to information and created the possibility of a competition based upon biased ground rules. On the other hand, in *IT Facility Services—Joint Venture*, GAO found that a contractor consultant employed by the agency did not have a conflict of interest, where the consultant prepared both the in-house management plan and the independent government estimate, because the consultant employed discrete sets of employees, separated by a "firewall," to perform these tasks.

Cost Issues

To ensure that cost comparisons are fair and reasonable, the A-76 Revised Supplemental Handbook (RSH) provides guidance for the development of the costs of in-house performance and of contract performance.[6] GAO has found, however, in a number of cases that an agency did not fairly and realistically account in the cost comparison for the costs of in-house and contract performance. For example, although the RSH provides that costs that are common to both in-house and contract performance should not be computed in the cost comparison, GAO found in *DynCorp Technical Services LLC* that the agency failed to treat the private-sector offer and in-house plan equally with respect to the costs of government-furnished material that would be provided to either the private-sector offeror or the MEO. In that case, the in-house cost estimate deducted the value of the government-furnished material from its estimated material costs, while the private-sector offer did not.

The RSH also permits the addition or subtraction of certain costs from the proposed price of the private-sector offer to calculate the likely cost of contract performance. For example, the RSH

[6] RSH, part II, chs. 1-4.

provides for the deduction of the estimated federal income tax a contractor would pay for income received from performing the work subject to the cost comparison.[7] In *Trajen, Inc.*, GAO found that an agency used an incorrect industry code, which resulted in the application of an unrealistically low federal income tax rate. On the other hand, the RSH allows the government to add its costs for administration of the contract and the costs incurred as a result of converting from in-house to contract performance to the proposed price of contract performance.[8] Examples of costs incurred by converting from in-house to contract performance include relocation or retraining costs. In *Del-Jen, Inc.*, GAO found that the agency may have overstated the grade levels of government personnel that would be required to administer a contract with the private-sector offeror and that this resulted in contract administration costs being overstated.

List of Recent GAO Cases Concerning A-76 Studies *(in reverse chronological order)*

Rice Services, Ltd., B-284997.5, Mar. 12, 2002, 2002 CPD ¶ ___: GAO denied the protest of the Department of the Navy's decision to cancel the solicitation that the agency issued to determine whether to contract out or retain in-house performance of food services at the U.S. Naval Academy. GAO found that cancellation of the solicitation was reasonable where the Navy determined that the solicitation did not clearly provide for the evaluation of corporate experience, which the agency considered to be a critical element in identifying the entity that could best meet the agency's needs, and also that the solicitation contained a number of other flaws and inconsistencies.

Del-Jen, Inc., B-287273.2, Jan. 23, 2002, 2002 CPD ¶ 27: GAO sustained the protest of the Department of the Air Force's decision to retain for in-house performance the civil engineering function at Hanscom Air Force Base, Massachusetts. The Air Force determined that the $72 million in-house cost estimate was lower than the cost of performance by the private-sector offeror. GAO found that the agency may have understated the contract administration costs necessary for in-house performance and overstated the contract administration costs that were added to the private-sector offer to reflect the government's administration of that contract.

NVT Technologies, Inc., B-289087, Jan. 3, 2002, 2002 CPD ¶ 1: GAO denied the protest of the Department of the Navy's decision to continue in-house performance of base operations and support services at the Marine Corps Recruit Depot in San Diego, California. The in-house cost estimate of $40 million to perform the services was lower than the evaluated cost of performance by the protester. GAO found that the "most efficient organization" for in-house performance identified and stated costs for all positions necessary to perform the PWS requirements.

[7] RSH, part II, ch. 3, ¶ G.

[8] RSH, part II, ch. 3, ¶¶ C, E.

The Jones/Hill Joint Venture, B-286194.4 et al., Dec. 5, 2001, 2001 CPD ¶ 194:[9] GAO sustained the protest of the decision by the Department of the Navy that the in-house cost estimate of $138 million to perform base operations and base support services in-house at the Naval Air Station, Lemoore, California was more economical than awarding a contract to the protester to perform these services. GAO found that a conflict of interest existed where an agency employee and a consultant retained by the agency wrote and edited the PWS and the management plan for in-house performance. In addition, GAO found that the Navy misevaluated the in-house management plan, which was based on the use of personnel not included in the "most efficient organization," and also found that the Navy had not accounted for potential benefits to the government in the protester's proposal.

Lackland 21st Century Services Consolidated, B-285938.7, B-285938.8, Dec. 4, 2001, 2001 CPD ¶ 197: GAO denied the protest of the cancellation of a solicitation issued by the Department of the Air Force to determine whether to contract out or retain in-house performance of base operations support at Lackland Air Force Base, Texas. GAO found that cancellation of the solicitation was reasonable where the agency reasonably concluded, from a limited review by in-house auditors, that problems with the solicitation may have resulted in a flawed private-sector competition.

Johnson Controls World Services, Inc., B-288636, B-288636.2, Nov. 23, 2001, 2001 CPD ¶ 191: GAO denied the protest of the Department of the Army's decision to retain in-house logistics and public works functions at Fort Jackson, South Carolina. The Army found the in-house cost estimate of $63 million was more economical than the protester's evaluated costs. GAO found that the Army was not required to have a detailed "position-by-position" analysis tracking positions from its historical staffing to the in-house plan. GAO found that it had no basis to question the Army's determination that the in-house plan met the PWS requirements.

TDF Corporation, B-288392, B-288392.2, Oct. 23, 2001, 2001 CPD ¶ 178: GAO found that the Department of the Army, in conducting the private-sector competition under an A-76 commercial activities study, properly eliminated TDF's proposal from the competition. GAO found that the agency reasonably determined that TDF's proposal to perform information-technology-based operation support services for Rock Island Arsenal did not satisfy the PWS staffing requirements. GAO also denied the protest allegation that 2 of 9 evaluation board members held positions in the function under study and thus had a conflict of interest. GAO found from its review of the record that there was no meaningful flaw or inaccuracy in the evaluation and the protester was not prejudiced.

[9] The Navy's request for reconsideration of this decision is currently pending.

COBRO Corporation, B-287578.2, Oct. 15, 2001, 2001 CPD ¶ 181: GAO sustained the protest of the Department of the Army's determination that the in-house cost estimate of $8.9 million to perform aircraft engine material management functions at Redstone Arsenal was more economical than awarding a contract to the protester to perform these services. GAO found that the agency improperly prohibited private-sector offerors from using existing government facilities, while the in-house cost estimate assumed use of those facilities, and thus the in-house plan apparently had a significant cost advantage.

IT Corporation, B-288507, Sept. 7, 2001, 2001 CPD ¶ 150: GAO dismissed as premature the protest of the private-sector offeror challenging the decision of the Department of the Navy's administrative appeal authority that it would be less costly to retain in-house performance of public works services at the Naval Air Weapons Station, China Lake, California. The appeal authority upheld the protester's appeal but remanded the matter to the agency to take corrective action, and the Navy had not yet decided what action to take.

DynCorp Technical Services LLC, B-284833.3, B-284833.4, July 17, 2001 CPD ¶ 112: GAO found that the Department of the Air Force improperly determined that the in-house cost estimate of $188 million was more economical than awarding a contract to DynCorp to perform base operation services at Maxwell Air Force Base and Gunter Annex in Alabama. In conducting the A-76 cost comparison, the agency did not consider the cost of government-furnished material as a common cost item equally applicable to both the in-house cost estimate and the private-sector offer. The agency also failed to ensure that the in-house cost estimate and the selected private sector offer were based upon the same scope of work and performance standards. The protester offered an accelerated performance schedule and the in-house plan did not. Because the record established that performance by DynCorp would be less costly than in-house performance, GAO recommended that award be made to DynCorp.

Lackland 21st Century Services Consolidated—Protest and Costs, B-285938.6, July 13, 2001, 2001 CPD ¶ 124: GAO found that it was not unreasonable for the Department of the Air Force to delay award for 5 months (an action promised as part of earlier corrective action) to the private-sector offeror to perform base operations support at Lackland Air Force Base, Texas, while awaiting completion of a review by the agency's Inspector General.

BAE Systems, B-287189, B-287189.2, May 14, 2001, 2001 CPD ¶ 86: GAO sustained the protest of the Department of the Army's determination that the in-house cost estimate of $59 million was lower than the cost of contracting out performance of logistics support and services for the U.S. Army Garrison in Hawaii. GAO found that the agency did not reasonably determine that the in-

house management plan satisfied the PWS key personnel requirements, failed to reasonably determine how much staffing was required to perform the functions of personal property shipping offices in-house, and failed to consider the protester's offer to exceed a PWS requirement.

Day Zimmermann Hawthorne Corporation, B-287121, Mar. 30, 2001, 2001 CPD ¶ 60: GAO denied the protest of the terms of a solicitation issued by the Department of the Navy to determine whether to contract out or retain in-house ordnance handling support and base operations services for the Naval Weapons Station, Seal Beach, California. GAO found that the absence in the solicitation of the clause for indemnification under Public Law 85-804 and of a requirement for private-sector offerors to obtain specific insurance coverage for explosives and/or environmental incidents did not impose inordinate risk that unduly restricted the competition. Private-sector offerors were free to exercise business judgment in deciding whether to include such coverage in their offers.

The Jones/Hill Joint Venture—Costs, B-286194.3, Mar. 27, 2001, 2001 CPD ¶ 62: GAO found clearly meritorious a protest challenging the Department of the Navy's decision to retain in-house performance of base operations and base support services at the Naval Air Station, Lemoore, California. GAO found that the Navy unreasonably determined that the in-house management plan offered the same level of performance and performance quality as the selected private-sector proposal without considering strengths identified in the private-sector proposal during the best value competition. The Navy improperly accepted without adequate analysis unsupported claims made by the in-house team regarding its ability to achieve the same level of performance and performance quality as the best value private-sector proposal. The in-house plan also provided for the performance of a certain task by individuals who were not costed in the in-house plan.

Johnson Controls World Services, Inc., B-286714.2, Feb. 13, 2001, 2001 CPD ¶ 20: GAO sustained the protest of the selection of the private-sector offeror to compete against the Department of the Army's "most efficient organization" to perform installation support services at Fort Benning, Georgia. GAO found that the private-sector awardee had a conflict of interest because the awardee's subcontractor had unequal access to information through its work under another government contract. GAO also found that the awardee's subcontractor had potentially impaired objectivity where, under the terms of the other government contract, the subcontractor would be making recommendations that could benefit the awardee.

LBM, Inc., B-286271, Dec. 1, 2000, 2000 CPD ¶ 194: GAO denied the protest of the terms of the solicitation the Department of the Navy issued to determine whether to contract out or retain in-house performance of transportation services at the Naval Aviation Depot in Cherry Point, North Carolina.

Agency needs could reasonably include the contractor's ISO-9000[10] registration for quality assurance standards, given the nature of the anticipated contract performance, and the fact that the agency did not exclude private-sector offers solely on the basis that an offeror had not, at the time of proposal submission, obtained ISO-9000 registration.

IT Facility Services-Joint Venture, B-285841, Oct. 17, 2000, 2000 CPD ¶ 177: GAO found that the Department of the Army properly eliminated the protester's proposal from the competition. GAO found that the agency reasonably determined that the protester proposed insufficient staffing to perform public works and logistics services at Fort Lee, Virginia. GAO also found that, although 4 of 7 evaluation board members were employed in the areas under study, there was no conflict of interest because those evaluators' positions were not subject to being contracted out. GAO also found that, although one evaluator had a conflict of interest because her spouse held a position that was subject to being contracted out, the record established that the protester was not prejudiced.

Rice Services, Ltd., B-284997, June 29, 2000, 2000 CPD ¶ 113: GAO sustained the protest of the Department of the Navy's determination to retain in-house performance of food services activities at the U.S. Naval Academy. GAO found that the Navy did not reasonably compare the level and quality of performance of the in-house plan to that offered by the protester. The protester's proposal won the private-sector competition on the basis of its technical superiority.

American Federation of Government Employees, AFL-CIO et al., B-282904.2, June 7, 2000, 2000 CPD ¶ 87: Federal employees and the unions representing them may not protest to GAO an adverse agency decision under a commercial activities study because they are not actual or prospective offerors and thus are not "interested parties" eligible to maintain a protest under GAO's statutory protest jurisdiction.

Trajen, Inc., B-284310, B284310.2, Mar. 28, 2000, 2000 CPD ¶ 61: GAO found unreasonable an appeal authority decision reversing the initial cost comparison conclusion that the private-sector offer of $12.7 million was more economical than operating in-house the Defense Fuel Support Point, Pearl Harbor, Hawaii. Key issues were whether the in-house plan satisfied all the PWS requirements and whether one-time conversion costs (specifically, relocation costs) were reasonably calculated.

Aberdeen Technical Services, B-283727.2, Feb. 22, 2000, 2000 CPD ¶ 46: GAO sustained the protest of the Department of the Army's decision that the in-house cost estimate of $129 million was lower than the cost of the protester's proposed performance of base industrial operations at the Aberdeen Proving Ground, Maryland.

[10]ISO-9000 standards are a series of internationally recognized quality assurance standards established by the International Standards Organization (ISO). To become registered, a company's procedures are reviewed for compliance with the standards by an independently accredited registrar.

GAO found that the in-house plan did not satisfy PWS requirements for a full-time, dedicated program manager, as well as for other key personnel positions, that the Army improperly disallowed the protester's offered fixed-price reduction in its final proposal revision, and that the agency did not reasonably determine whether the in-house plan offered the same level and quality of performance as the protester, whose offer was selected on a best value basis.

RTS Travel Service, B-283055, Sept. 23, 1999, 99-2 CPD ¶ 55: GAO found reasonable the determination by the Department of the Air Force, under the A-76 procedures for estimating costs for a direct conversion, that the in-house cost estimate of $910,348 to perform traffic management office services at the Los Angeles Air Force Base, California, was lower than the cost of contracting out those services. Specifically, GAO denied the protest of the agency's decision to add to the private-sector offer's cost the cost of a .5 full-time equivalent, at a GS-7 grade level, government employee to perform contract administration, finding that the agency's decision was reasonable and in accord with the A-76 Revised Supplemental Handbook.

BMAR & Associates, Inc., B-281664, Mar. 18, 1999, 99-1 CPD ¶ 62: GAO sustained the protest of the Department of the Air Force's solicitation to determine whether to contract out or retain in-house performance of civil engineering services at Eglin Air Force Base, Florida. GAO agreed with the protester that the solicitation's lump sum pricing scheme, which provided no limitation on the amount of work that could be ordered, placed inordinate risk on the contractor and unduly restricted competition.

Symvionics, Inc., B-281199.2, Mar. 4, 1999, 99-1 CPD ¶ 48: GAO denied the protest challenging the decision of the Department of the Air Force to retain in-house the management of military family housing at Patrick Air Force Base, Florida. Although the Air Force failed to seal the in-house study team's management plan prior to receipt of proposals as required in an A-76 cost comparison, GAO found that the agency approved and kept secure the management plan, such that the record established that there was not prejudice to the protester. GAO also found that the agency properly corrected the study team's proposed use of volunteers by adding sufficient staffing to the in-house cost estimate to perform the PWS requirements.

Gemini Industries, Inc., B-281323, Jan. 25, 1999, 99-1 CPD ¶ 22: GAO found that the Defense Commissary Agency reasonably rejected the protester's proposal during the private-sector competition under an A-76 commercial activities study for various commissary services at Fort Drum, New York. The agency found that the protester had not offered sufficient staffing to perform the PWS requirements and that the protester had not adequately explained its approach for contract performance.

DZS/Baker LLC; Morrison Knudsen Corporation, B-281224 et al., Jan. 12, 1999, 99-1 CPD ¶ 19: GAO sustained the protests challenging the Department of the Air Force's determination to reject the protesters' proposals as technically unacceptable and to cancel the commercial activity study to determine whether in-house performance of civil operations and maintenance services at Wright-Patterson Air Force Base, Ohio, was more economical than contracting out. GAO found that 14 of 16 evaluation board members held positions that could have been contracted out, and that there was a significant conflict of interest that could not be mitigated.

Omni Corporation, B-281082, Dec. 22, 1998, 98-2 CPD ¶ 159: GAO dismissed as premature the protest of an unsuccessful offeror in the private-sector competition, conducted by the U.S. Army Corps of Engineers. The goal of the competition was to select a private offer for comparison against the government's in-house cost estimate for the operation and maintenance of five lock and dam facilities on the Red River, Louisiana. GAO found that the protester should file its protest after the post-award debriefing offered by the agency.

NWT, Inc.; PharmChem Laboratories, Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158: GAO denied the protest of PharmChem challenging the decision of the Department of the Army that the in-house plan to perform drug testing at Tripler Army Medical Center, Forensic Toxicology Drug Testing Laboratory was more economical than performance by PharmChem, the successful private-sector offeror. GAO found that the agency reasonably concluded that the in-house plan and PharmChem's proposal offered comparable levels and quality of performance. GAO also found reasonable the agency's determination that the in-house cost estimate reflected the costs required for in-house performance.

Appendix E

Public-Private Competitions for DOD Depot-Level Maintenance

One of the few areas where the federal government has experience conducting public-private competitions without use of Circular A-76 procedures is for depot-level maintenance in the Department of Defense. During the 1990s, the military services, particularly the Air Force, conducted dozens of public-private depot competitions. Of particular interest, in light of the Panel's recommendations, is that the public-private competitions for depot-level maintenance work have been conducted under a process that incorporates much of the process set out in the Federal Acquisition Regulation (FAR) for negotiated procurements, with the costing of the public-sector proposal governed by special rules similar, but not identical, to the rules used under Circular A-76. This appendix presents a brief summary of the legal framework used in the depot competitions, the way the competitions were conducted, and the results of the most recent competitions.

Several statutory provisions currently govern the use of public-private competitions for the performance of depot workloads. In particular, 10 U.S.C. § 2469 provides for the use of "competitive procedures for competitions among private and public sector entities" whenever the Department of Defense contemplates changing the performance of public depot workloads of $3 million or more to contractor performance. By statute, Circular A-76 does not apply to depot competitions.

Neither 10 U.S.C. § 2469 nor any other statute prescribes the specific elements that constitute the appropriate "competitive procedures" for depot competitions. The Air Force established procedures which stated that, in public-private depot competitions, "standard acquisition policies and procedures will be used to the maximum extent possible with all offerors (public and private) subjected to the same process." Accordingly, many of the standard FAR procedures were used, including the requirement that a solicitation state the government's needs clearly and unambiguously; that restrictive provisions be included in a solicitation only to the extent needed to satisfy the government's needs; that the solicitation announce the selection (award) criteria; and that the selection be made in a reasonable manner and consistent with the solicitation's criteria.

The special procedures for the depot competitions provided for "arm's length" relationships between the contracting organization and all competing depots. Where a public activity decided to compete for a requirement, the head of the activity was to notify the contracting officer. Once a decision was made to compete, the public activity was to submit a proposal in compliance with the rules set out in the solicitation, and information was to be shared equally with private and public offerors. Also, there were procedures for internal adjudication of any protests by either public or private offerors.

Section 2469a of title 10 of the United States Code established specific procedures and source selection requirements for the public-private competitions conducted in 1998-1999 for the depot workloads at the closing San Antonio and Sacramento Air

Logistics Centers. This provision also directed GAO to report to Congress on the solicitations and competitions.[1]

At San Antonio and Sacramento, the solicitations stated evaluation criteria that included management, risk, cost, and other considerations. For each offeror, including the public offeror, a total evaluated cost was calculated by making adjustments required by the solicitation and the Air Force's special depot competition cost comparability handbook[2] (which, while somewhat similar, differed in many ways from the A-76 process for calculating costs), and then further adjustments to reflect the evaluators' quantification or "dollarization" of significant strengths, weaknesses, and risks in the offerors' technical proposals. The solicitations set out a somewhat complex selection process that combined elements of the low-cost/technically acceptable and the cost/technical tradeoff approaches.

For the depot maintenance workload at the closing Sacramento Air Logistics Center, the Air Force selected Ogden Air Logistics Center (with Boeing Aerospace Corporation as its partner) over Lockheed Martin. For the depot maintenance workload at the closing San Antonio Air Logistics Center, the Air Force selected the Oklahoma City Air Logistics Center (with Lockheed Martin Kelly Aircraft Company as its principal partner) over the private-sector offeror, Pratt & Whitney. In each case, GAO reviewed the competition process and concluded that it complied with applicable statutes and regulations and was fair and reasonable. In particular, GAO found that the competition reasonably addressed the issue of public-sector accountability for costs. Although it had concern about the calculation of some cost items, overall GAO found that the cost evaluations were reasonable.

[1] *Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation*, GAO/OGC-98-48, (Washington, D.C.: May 1998); *Public-Private Competitions: Review of San Antonio Depot Solicitation*, GAO/OGC-98-49, (Washington, D.C.: June 1998); *Public-Private Competitions: Reasonable Processes Used for Sacramento Depot Maintenance Award*, GAO/NSIAD-99-124, (Washington, D.C.: May 1999); *Public-Private Competitions: Reasonable Processes Used for San Antonio Engine Depot Maintenance Award*, GAO/NSIAD-99-155, (Washington, D.C.: May 1999); see also *Public-Private Competitions: Processes Used for C-5 Aircraft Award Appear Reasonable*, GAO/NSIAD-98-72, (Washington, D.C.: Jan. 1998).

[2] Air Force Materiel Command, *Procedures for Depot Level Public-Private Competition*, supplemented by the *Defense Depot Maintenance Council Cost Comparability Handbook* and the *SAF/AQ Public-Private Competition Cost Procedures*, (Feb. 21, 1998).

Appendix F

Sourcing Practices and Demonstration Projects

1. Business Process Reengineering—Crane Division, Naval Surface Warfare Center Case Study

In April of 1998, Crane Naval Surface Warfare Center began a pilot program using business process reengineering. Business process reengineering (BPR) is one way to redesign the way work is done to better support an organization's mission and reduce costs. Reengineering identifies, analyzes, and redesigns an organization's core business processes with the goal of achieving dramatic improvements in critical performance measures, such as cost, quality, service, and speed.

Crane is a high-technology acquisition and support organization serving a broad customer base in the areas of electronics, electronic warfare, and ordnance. Crane is southwestern Indiana's second largest employer, with a budget of $800 million and about 3,900 civilian and military personnel. Crane's fiscal system is similar to that of a private firm, where the labor rates include the costs of direct salaries, employee benefits, and overhead to run the base. More than 98 percent of Crane's funding comes from its customers. In order to compete, Crane must operate efficiently, keep labor rates low, and maintain a high level of technical capability.

In 1998, Navy officials initially announced 576 positions for commercial competition under A-76. These positions encompassed about a dozen functional areas at Crane. However, due to the high level of integration across these functional areas, Crane officials were concerned that by outsourcing positions the organization might gain efficiency at the functional level but lose efficiency at the organizational level. Crane proposed to conduct business process reengineering across the entire organization with the goal of achieving the same cost savings goals expected from A-76. The $13.7 million Crane has spent on BPR has come out of its own overhead budget as an internal investment.

Key milestones in the BPR process:

- During the "As-Is High-Level Assessment," the process is mapped and data is collected to establish the baseline. Savings in the end will be compared against this baseline.
- During the "Develop To-Be Assessment," the team must evaluate the potential for outsourcing the business process totally or in part, given specified criteria.
- At the "Implementation" phase, personnel realignment is carried out in accordance with the procedures agreed to in a memorandum of agreement between labor and management.
- A review in the form of a report to the senior leadership is required 6 months after implementation. After a year, the internal Command and Evaluation Unit conducts an independent assessment.

According to Crane officials, BPR has enabled Crane to achieve the savings equivalent to those estimated under proposed A-76 competitions.

2. Privatization-in-Place—Naval Air Warfare Center, Aircraft Division, Indianapolis Case Study

The Navy/Department of Defense included the Naval Air Warfare Center–

Aircraft Division, Indianapolis (NAWC), in the 1995 base realignment and closure round. Rather than contest the closure, the city of Indianapolis proposed an alternative to the closure decision: privatization-in-place. Privatization-in-place is a concept in which a private sector entity takes over the operations of a facility that was once operated by the government. To date, this concept has been applied primarily by the Department of Defense to transfer industrial work to the private sector.

The city of Indianapolis and the Navy created a joint team, called the Joint Privatization Steering Group, to examine alternative privatization approaches. Because the alternative chosen by the group would affect the city more than other stakeholders, the city sought to create a major employment center by turning the site over to a viable commercial entity.

Based on cooperative negotiations, the Navy determined it was in the best interests of both parties for the city to conduct a competitive selection process to identify a contractor capable of managing the NAWC Indianapolis site. The Navy notified Congress that it was in the public interest to award a contract to the firm selected by the city. The city was able to apply commercial practices to the selection process and complete the selection faster than a normal DOD procurement of this magnitude. After an open competition, the city of Indianapolis selected Hughes Technical Services Company (now Raytheon Technical Services Company), a subsidiary of Hughes Electronics Corporation, as the corporate partner in the NAWC Indianapolis privatization effort.

Analysis found that privatization had strong potential to reduce infrastructure and costs, minimize disruption to Navy programs, and preserve the integrated capabilities of the existing facilities and the highly trained workforce. One-time move costs associated with closure were drastically reduced. The government avoided a potential $200 million in base closing costs. Also, labor costs have been reduced. In addition to government savings, 2000 jobs were preserved in the city of Indianapolis.

3. Public-Private Competition—City of Indianapolis Case Study

In 1992, the city of Indianapolis opened up certain functions traditionally performed by the city's workers to competition with the private sector. Indianapolis included city employees, through their union, in the process for competitive bidding for contracts to deliver city services. Once a number of activities had been identified as candidates for competition, city officials developed a three-phase approach to implementing a managed competition process. The three phases were:

(1) determining the costs of government services using activity-based costing;

(2) openly and competitively bidding for functions or services and contracting with either a city agency or private-sector firm to provide those functions or services; and

(3) evaluating the level of performance of functions and services delivered using a system of citizen and customer satisfaction surveys and measures of cost and performance.

First, after a discussion with the affected unions, city officials decided whether or not to open competitive bidding for an activity. If the decision was to compete, the city then issued a request for proposals. The city provided a bid package to the union at the same time as it did to other potential bidders.

Second, to ensure that city employees were equipped to participate in the process, the city provided managers and union members with the analytical training they needed to spot inefficiencies and with the knowledge needed to analyze and reduce costs. The city also provided consultants to help city employees prepare their proposals.

Third, a union-management bid team reviewed the bid document and determined (1) the number of employees and hours needed to perform the function, as well as the amount of equipment and materials needed, and (2) the necessary financial and performance information, which was provided by management. The team then worked to streamline the work processes and rewrite the work plan. Often with the help of consultants provided by the city, the team then prepared the bid package, which was submitted along with private bids.

Fourth, at a public forum, all public- and private-sector bids were opened together, and the winning bid was announced.

Finally, if the public sector won a competition and the union-management team performed the activity at the desired level of performance for less than it bid, the team received a share of the savings at the end of the year. The city, after it tracked performance over a period of years, could place a moratorium on bidding for areas for which city employees had demonstrated performance excellence and in which they consistently outbid private competitors.

City officials claim that introducing competition increased the value of services received by the taxpayers and citizens. They also stated that competition contributed to the city's ability to cut property taxes, balance the budget, cut staff levels, reduce red tape, put more police officers on the street, and invest more than $1.3 billion in an infrastructure improvement program.

4. Information Technology Outsourcing Program—San Diego

Faced with budgetary constraints and technology systems lacking even rudimentary communication applications, such as voicemail and e-mail, the San Diego County Board of Supervisors decided to upgrade the county's information technology program through an outsourcing partnership. On a unanimous vote, the board hired a consortium of private companies with a contract valued at $644 million over 7 years, with contract extensions possible through three 1-year renewals. This is considered the largest information technology outsourcing ever carried out by a local or state government.

The county's goal was to implement a world-class technology infrastructure that would support frontline services for citizens. The county would make these services available around the clock via the Web. There were a number of benefits to this approach. First and foremost, the county did not have to raise the cash

needed for this massive technological overhaul; instead, costs were spread out over the life of the contract. Also, the county benefited from the combined experience of notable private-sector companies. Other benefits included:

- Current county information technology employees were guaranteed two years employment in San Diego County with the contractor.
- Personal computers were replaced within 36 months, and are scheduled to be replaced again within the next 48 months.
- The county created information technology performance standards that any vendor must meet. Also, the county created incentives for exceeding those standards and imposed fee reductions for failing to meet them.
- The county can terminate a contract at any time, if the contractor defaults on the contract.

5. Public-Public Partnership—The City of Monterey Case Study

Since the mid-1980's, the city of Monterey has been providing some services at local Army and Navy installations. To expand the services offered, the city of Monterey, along with its neighboring city of Seaside, entered into a public-public partnership with the local Army and Navy bases. The cities of Monterey and Seaside formed a Joint Powers Agency to deliver municipal services to Presidio of Monterey and Ord Military Community. Services provided to date include childcare support; maintenance of streets and buildings; and maintenance of water, wastewater, and stormwater systems.

These partnerships have provided substantial cost savings and enhanced the quality and operational effectiveness of the military missions in Monterey. Because federal law prohibits certain partnerships with the military, it has not always been possible for the military to contract out services to local agencies or cities that could provide services at a lower cost. The National Defense Authorization Act of 1995 established a pilot program allowing the armed services to purchase fire, security, police, public works, and utility services from local government agencies. This allowed local entities to move forward with ideas and concepts that encourage cooperation to save dollars and advance both military and civilian interests.

6. The Lackland Air Force Base A-76 Study

The A-76 competition for base operation support functions at Lackland Air Force Base, San Antonio, Texas, has been unusual in its reversal of awards to the private and public sectors. A brief recap of the course of this ongoing process demonstrates many of the challenges involved in conducting an A-76 competition.

After the 1995 round of base realignments and closures, the Air Force needed to consolidate base operations at Lackland. To do so, an A-76 cost comparison competition was initiated in January 1999. The scope of the competition covered 1,482 full-time equivalent employees (FTEs) performing 19 operation support functions for the Air Force's Air Education and Training Command (AETC).

The Air Force established the most efficient organization (MEO) study team in May 1999 and issued a solicitation to the private sector offerors in August 1999. By May 2000, Lackland 21st Century Services Consolidated (L21), a consortium of Computer Sciences Corporation, Del-Jen, Inc., and TECOM, Inc. was determined to be the best-value private sector offeror. Shortly thereafter, the Lackland source selection authority directed the MEO to increase staffing on a number of operations and reduce calculated savings on others. These changes increased the cost of the MEO alternative, and the MEO challenged them in a bid protest filed with the General Accounting Office (GAO) on July 27, 2000. Although MEOs are not considered "interested parties" under GAO's bid protest statute,[1] and only an interested party can pursue a protest,[2] the protest was withdrawn by the Air Force before GAO could dismiss it. The Air Force's withdrawal of the protest was based on its view that the MEO is a subordinate Air Force entity and did not have separate authority to pursue a protest.

The cost comparison between the MEO and L-21 was concluded on August 17, 2000. At that time, the contracting officer announced the tentative selection of L-21, rather than in-house performance by the MEO. The MEO appealed this decision to the Air Force AETC appeal authority in September 2000. Unlike GAO's bid protest forum, the AETC appeal authority is permitted to hear appeals from MEOs. Five weeks later the AETC appeal authority reversed the tentative award to L-21. The reversal was based on the consideration of contract administration costs and the one-time costs of the conversion to performance by a private-sector entity.

In November 2000, L-21 filed a GAO bid protest challenging the methods used by the Air Force to make its cost comparison. L-21 claimed that the Air Force improperly calculated contract administration costs and the contractor's fee, erroneously reduced the MEO's FTEs, and failed to make adjustments to the MEO's proposal to account for the superior performance levels and increased quality of the L-21 proposal. L-21 also argued that the Air Force had failed to safeguard its proposal data, and that the MEO's technical solution was unfairly based on L-21's proposed approach.

While L-21's GAO protest was pending, the AETC appeal authority again reversed itself, concluding that L-21's challenges had merit, and reinstating the selection of L-21. As a result, L-21's protest was considered academic and was dismissed by GAO.

In December 2000, AFGE, acting on behalf of the Lackland employees, filed suit against the Air Force in U.S. District Court in San Antonio, Texas. The suit argued that the Air Force had not followed proper A-76 procedures in selecting L-21. AFGE's lawsuit was dismissed on March 7, 2001, as the court concluded that AFGE and federal employees lack standing to challenge an A-76 selection decision. The court explained that the existing laws governing the A-76 process do not provide federal employees with the right to sue in this area.

Also in December 2000, the DOD Inspector General (IG) initiated an audit of the Lackland cost comparison process

[1] 31 U.S.C. § 3551.

[2] 31 U.S.C. § 3553(a); see Appendix C in this report on standing.

after receiving requests from DOD's Deputy Secretary, and from several members of Congress from the state of Texas. The DOD IG's report was issued May 14, 2001, and raised several questions about the procedures used by the Air Force in conducting the Lackland public-private competition. Among the IG report's findings:

- The contracting officer was often untimely in responding to information requests from the MEO and did not prepare clarifying amendments based on request responses. As a result of inconsistent information dissemination, the MEO was directed to increase its staffing.
- The contracting officer's response to a request for information regarding common costs ultimately confounded the resolution of whether some costs should be considered common. This became a point of contention in the workforce administrative appeal.
- The principal review officers who reviewed the MEO and certified the cost comparison had minimal A-76 training.
- The AETC and Lackland review officers lacked independence from AETC management and were subordinate to the source selection authority, a lieutenant general.

On May 11, 2001, L-21 asked GAO to reinstate its earlier bid protest, which was dismissed when the Air Force announced that it was reinstating the selection of L-21. According to L-21, the Air Force was unreasonably delaying the promised award by waiting for the DOD IG review. GAO declined to reinstate the earlier protest, noting that the Air Force had not renounced the decision that resulted in dismissal of the earlier protest but was reasonably awaiting the result of the IG review.

Upon receipt of the IG report, the Air Force asked its own auditors to review the report and the results of the previous appeals, protests, and disputes, to assess the agency's ability to reach a supportable decision. After the Air Force auditors advised management that award to either L-21 or the MEO involved risk because of remaining unresolved issues, the Air Force announced on August 27, 2001, that it was canceling the solicitation and reinitiating the A-76 competition for these services.

On September 6, 2001, L-21 filed a third bid protest, arguing that the decision to cancel the on-going competition and reinitiate the cost comparison process was unreasonable. On December 4, GAO denied L-21's protest, concluding that the Air Force had a reasonable basis for its decision to cancel the procurement and reinitiate the process.

Currently, the Air Force is considering its next course of action considering the issues raised by the AETC appeal authority, the GAO bid protest forum, the DOD IG report, and the in-house review of Air Force auditors.

Appendix G

Sourcing Decisions Outside the Federal Government

Outsourcing is increasingly used by commercial firms, as well as by state and local governments, and many believe that the federal government should study and adopt the best practices in this area. In the private sector and in state and local governments, outsourcing has been used primarily for non-core services, such as information technology (IT), payroll processing, and other "back office" services.

The Panel heard about outsourcing from private-sector witnesses at its hearing in Washington, D.C. Witnesses testified, for example, that General Motors outsources its $250 billion annual processing of accounts payable, accounts receivable, and payroll; Microsoft outsources its finance and accounting work, much of its manufacturing and distribution, and even its customer support; and PricewaterhouseCoopers outsources its personnel benefits, real estate management, and travel systems.[1]

In the private sector, cost savings are an important factor in outsourcing decisions. Cost considerations may include, for example, a desire to reduce capital investments by shifting ownership of IT resources to an external service provider. However, one witness told the Panel that only about one third of private-sector outsourcing decisions are made with cost as the primary consideration.

Outsourcing is also used in the commercial sector to increase the enterprise's operational efficiency and effectiveness. In this regard, the Panel learned that successful commercial outsourcing decisions reflect strategic thinking about the enterprise and its activities. For example, by transferring responsibility for "back office" services to an external provider, outsourcing allows the enterprise and its management to focus internal resources on its core business competencies, where the enterprise may possess a competitive advantage. Outsourcing is also often seen by the private sector as the most efficient way for the enterprise to gain access to skills and personnel outside the organization, to improve quality, and to enhance flexibility, innovation and cutting-edge thinking.

A formal competition between in-house and outside sources is rarely conducted. Instead, the sourcing decision (internal vs. external) is generally made at a strategic level within the organization. Indeed, other than the OMB Circular A-76 cost comparison process and the competitions conducted by various municipalities (the Panel heard in some detail about the positive experiences of Indianapolis), the Panel is unaware of the use of formal internal versus external competitions in outsourcing decisions.

The Panel learned that, in the private sector, as with the federal government, making sourcing decisions and then implementing those decisions successfully present challenges. In particular, the Panel learned that the most challenging aspects of commercial outsourcing arise after a decision to outsource services has been made. In particular, drafting performance requirements and service-level agreements is critical to establish the appropriate legal framework to ensure that expectations are clearly conveyed and that the buyer will

be able to ensure the service provider's accountability. Monitoring an external provider's performance is also a major challenge of outsourcing.

[1] The Panel also reviewed studies of outsourcing in the commercial sector. For example, IT outsourcing in the commercial sector is analyzed in GAO's recent report *Information Technology: Leading Commercial Practices for Outsourcing of Services,* GAO-02-214 (Washington, D.C.: Nov. 2001), which identified three factors as key to the success of commercial outsourcing decisions: executive leadership, partner alignment, and management of the relationship with the service provider.

Appendix H

Related GAO Products

(These and other GAO documents are available via the GAO web page at: www.gao.gov)

Competitive Sourcing: Challenges in Expanding A-76 Governmentwide. GAO-02-498T. Washington, D.C.: March 6, 2002.

Contract Management: Improving Services Acquisitions. GAO-02-179T. Washington, D.C.: November 1, 2001.

Defense Logistics: Actions Needed to Overcome Capability Gaps in the Public Depot System. GAO-02-105. Washington, D.C.: October 12, 2001.

Defense Logistics: Strategic Planning Weaknesses Leave Economy, Efficiency, and Effectiveness of Future Support Systems at Risk. GAO-02-106. Washington, D.C.: October 11, 2001.

Human Capital: Attracting and Retaining a High-Quality Information Technology Workforce. GAO-02-113T. Washington, D.C.: October 4, 2001.

Securities And Exchange Commission: Human Capital Challenges Require Management Attention. GAO-01-947. Washington, D.C.: September 17, 2001.

Human Capital: Practices That Empowered and Involved Employees. GAO-01-1070. Washington, D.C.: September 14, 2001.

Defense Logistics: Air Force Lacks Data to Assess Contractor Logistics Support Approaches. GAO-01-618. Washington, D.C.: September 7, 2001.

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DOD Competitive Sourcing: More Consistency Needed in Identifying Commercial Activities. GAO/NSIAD-00-198. Washington, D.C.: August 2000.

DOD Competitive Sourcing: Savings Are Occurring, but Actions Are Needed to Improve Accuracy of Savings Estimates. GAO/NSIAD-00-107. Washington, D.C.: August 2000.

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Quadrennial Defense Review: Status of Efforts to Implement Personnel Reductions in the Army Materiel Command. GAO/NSIAD-99-123. Washington, D.C.: March 31, 1999.

Defense Reform Initiative: Progress, Opportunities, and Challenges. GAO/T-NSIAD-99-95. Washington, D.C.: March 2, 1999.

Force Structure: A-76 Not Applicable to Air Force 38th Engineering Installation Wing Plan. GAO/NSIAD-99-73. Washington, D.C.: February 26, 1999.

Future Years Defense Program: How Savings From Reform Initiatives Affect DOD's 1999-2003 Program. GAO/NSIAD-99-66. Washington, D.C.: February 25, 1999.

DOD Competitive Sourcing: Results of Recent Competitions. GAO/NSIAD-99-44. Washington, D.C.: February 23, 1999.

DOD Competitive Sourcing: Questions About Goals, Pace, and Risks of Key Reform Initiative. GAO/NSIAD-99-123. Washington, D.C.: March 31, 1999.

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Appendix I

Summary of Public Hearings

Washington, D.C. – June 11, 2001 "Outsourcing Principles and Criteria"

Key Points:

- Status quo is not acceptable to anyone.
- Sourcing decisions require a strategic approach.
- Federal workers should perform core government functions.
- Need for most efficient organizations (MEO) throughout the government.
- Government needs clear, transparent, and consistently applied sourcing criteria.
- Avoid arbitrary full-time equivalent (FTE) goals.
- Objective should be to provide quality services at reasonable cost.
- Provide for fair and efficient competition between the public and private sectors.
- Sourcing decisions require appropriate accountability.

List of Witnesses

The Honorable Neil Abercrombie
U.S. House of Representatives, Hawaii
John J. Sweeney
National President, AFL–CIO

Research and Educational Organization Views

Moshe Adler
Fiscal Policy Institute
Catherine Hill
Institute for Women's Policy Research
Paul Light
Brookings Institution
Max Sawicky
Economic Policy Institute

Private Industry Views

William Birkhofer
Jacobs Engineering Group, Inc.
Michael Corbett
Michael Corbett & Associates, Ltd.
Paul Lawrence
PricewaterhouseCoopers
John Satagaj
Small Business Legislative Council

Government Employee Association Views

Patricia Armstrong
Federal Managers Association
John Carr
National Air Traffic Controllers Association
Jayson Spiegel
Reserve Officers Association
Gary Storrs
American Federation of State, County and Municipal Employees, AFL-CIO

Business Association Views

Ken Beeks
Business Executives for National Security
Carl DeMaio
Reason Public Policy Institute
Gary Engebretson
Contract Services Association of America

Harris Miller
Information Technology Association of America

Individual Statements

Clay Ancell
EarthData Holdings
Danielle Brian
Project on Government Oversight
Betty Coll
National Treasury Employees Union (NTEU) Chapter 207, FDIC
Christopher Donnellan
National Association of Government Employees
Steve Else
Center for Public-Private Enterprise
Irene Facha
Local 2032 AFGE, AFL–CIO, HUD
Katie Fitzgerald
DC ACORN
James J. Goodyear
NTEU Chapter 280
Daniel Guttman
Johns Hopkins University
James J. Murphy
NTEU Chapter 280
Shirl Nelson
Acquisition Solutions, Inc.
Kenneth Nero
National Labor Relations Board
John Palatiello
MAPPS
James Angelo Ruggieri
National Society of Professional Engineers
Louise Sanchez
National Alliance of HUD Tenants
Chris Saffert
ACORN
Richard Schrader
TALX Corporation
Stephen Sorett
Reed Smith, LLP
Thomas Wray II
National Military Fish and Wildlife Association
Dennis Wright
Brown & Root Services

Statements for the record

Robert Agresta
Star Mountain, Inc.
Edna Barber
Civil Servant
Chauna Brocht
Economic Policy Institute
Matt Dollan
A-76 Advisor
Kathy Hamor
Healthcare Provider Credentials Verification Association
Bobby Harnage
American Federation of Government Employees
Alan Hungate
Financial Executives International
S.M. Lahey
Corrections U.S.A.
Jason Mahler
Computer and Communications Industry Association and the Government Electronics and Information Technology Association
Ann Markusen
University of Minnesota
Tim Nunnally-Olsen
Council of Defense and Space Industry Associations
Roy Resavage
Helicopter Association International
Stephanie Starkey
U.S. Chamber of Commerce
Richard Wallace
Wallace and Company
Henry Zellman
Civil Servant (retired)

Indianapolis, Indiana – August 8, 2001: "Alternatives to A-76"

Key Points:

- Crane Naval Surface Warfare Center's reengineering process led to significant efficiencies and reduced workforce trauma.
- Employees must be involved with any reform effort. Secrecy is counterproductive.
- Committed leadership, effective implementation, and well-planned workforce transition strategies are key to any reform effort.
- Privatization-in-place was used effectively at Indianapolis Naval Air Warfare Center (NAWC) to avert a transitional Base Realignment and Closure (BRAC) action.
- The city of Indianapolis provided certain technical and financial assistance to help workers successfully compete for the work.
- Certain technology upgrades in Monterey, California, via a public–private partnership led to efficiencies and increased effectiveness.
- Measuring performance is critical.
- A-76 is only one of many efficiency tools available to federal managers. Other tools include:
  - Bid to goal, which helps units become efficient and thus avoid A-76.
  - Transitional Benefit Corporation, a concept that promotes the transfer of government assets to the private sector and provides transition strategies for employees.
  - ESOP, under which employees own a piece of the organization that employs them. ESOPs have been established in a few federal organizations.

List of Witnesses

Congressional Views

The Honorable Steve Buyer
U.S. House of Representatives, Indiana
Eric Holcomb
Office of the Honorable John N. Hostettler, U.S. House of Representatives, Indiana

Strategic Sourcing/Business Process Reengineering—Crane Naval Surface Warfare Center (NSWC) Case Study

Capt. (Sel) Frank Aucremanne
Public Works Directorate
Duane Embree
Crane Division, NSWC, Naval Sea Systems Command
Bill Mason
American Federation of Government Employees, Local 1415
Bob Matthews
Business and Process Reengineering Project

Privatization-in-Place—Naval Air Warfare Center, Aircraft Division, Indianapolis Case Study

Donna Chastain
Raytheon Technical Services Company
Mike Mutek
Raytheon Technical Services Company
Michael Sargent
Arthur Andersen LLP
Jim Wheeler
Arthur Andersen LLP

Public–Private Competition—City of Indianapolis Case Study

Skip Stitt
Competitive Government Strategies, LLC (former deputy mayor of Indianapolis)
Steve Quick
American Federation of State, County and Municipal Employees, Local 725

Municipalities—County of San Diego and City of Monterey Case Studies

Tom Boardman
County of San Diego
Fred Meurer
City of Monterey

Performance Measurement, Bid-to-Goal, Transitional Benefit Corporations, and Employee Stock Ownership Plans

John Meason
New Mexico Technical University
Roger Neece
ESOP Advisors, Inc.
John Williams
Competitive Outcome Management Group

Individual Statements

Dr. Dan DeHayes
Kelley School of Business, Indiana University
Robert Gordon
MEVATEC Corporation
Mike Locklin
American Federation of Government Employees, Local 2302
Mariann Meeks
BET, Inc.
Colonel Jeff Parsons
U.S. Air Force

Statements for the record

Dr. Wendall Jones
Outsourcing Advisors International
Wallace Keene
Keene Ideas, Inc.
Harold Lawson
National Association of Government Employees
Steve Sorett
Reed Smith
John F. Williams
HDR, Inc.

San Antonio, Texas – August 15, 2001: "A-76, What's Working and What's Not"

Key Points:

- A-76 process is too long and too costly.
  - Cost of studies can greatly reduce government savings.
  - Cost to industry in both dollars and uncertainty.
- Demoralized workers quit. But successful contractors need these workers.
- Larger A-76 studies can yield greater savings, but these studies become much more complex.
- Lack of impetus for savings without competition.
- One-step bidding process should be used. MEO and contractors should:
  - Compete together in one procurement action.
  - Be evaluated against the same solicitation requirements using the same criteria.
  - Be awarded contracts based on best value.
- Provide more training to MEO and A-76 officials.
- MEOs should have legal status to protest and appeal awards and obtain bid information.
- A-76 rules should be more clear and applied consistently through a centralized management structure.
- For bid and monitoring purposes, government costs should be collected and allocated consistent with industry (e.g., activity-based costing).
- Need to eliminate any suggestion of conflicts of interest.
- Need incentives for agencies and workers (e.g., share-in-savings).
- Provide soft landings for workers.
- Allow workers to form public-sector organizations for bidding.

List of Witnesses:

Congressional Perspective

The Honorable Ciro D. Rodriguez
U.S. House of Representatives, Texas

Union Views

Wes Cloud
AFGE Local 2427, Naval Air Station, Fort Worth, Texas
Steve Halloway
AFGE Local 779, Sheppard Air Force Base, Wichita Falls, Texas
Garold Lawson
NAGE, Fort Leonard Wood, Missouri
Randy Mann
NTEU Chapter 72, Austin, Texas
Eloise Stripling
AFGE Local 1367, Lackland Air Force Base, San Antonio, Texas
Yolanda Taylor
AFGE Local 1920, Fort Hood, Texas

Bruce Thorne
AFGE Local 2142, Army Depot, Corpus Christi, Texas
Mario Villarreal
AFGE Local 1749, Laughlin Air Force Base, Del Rio, Texas

Department of Defense Views

Capt. Thomas Schaefer
Organization Management Infrastructure, Navy
Frank Sowa
Shore Readiness Division, Navy
Jerry Stark
A-76 program, Marine Corps
Brigadier General Joseph Stein
Manpower and Organization, Air Force
Jim Wakefield
Competitive Sourcing Office, Army

Industry Views

Gary Craft
CH2M HILL Services
John Delane
DEL–JEN, Inc.
Mike Donnelly
EG&G Technical Services, Inc.
George Finley
CC Distributors
Bryan Hochstein
Quickhire
Paul Lombardi
DynCorp

Territory of Guam's Experience with A-76

Senator Felix Camacho
Guam
Manuel Cruz
Guam AFGE
Jerry Parres
Guam Chamber of Commerce

Technology and the A-76 Process

Roland Harris, III
IBM Global Services
Stephen Rohleder
Accenture

Interested Parties Views on A-76

Robert Eckhart
Warden Associates, Inc.
Joan Fiorino, Esq.
Thurman & Phillips, P.C.
Alan Hungate
(accompanied by Mark Rosen)
Financial Executives International
Scott King
UMS Group
Sam Kleinman
The CNA Corporation
Shannon Lahey
California Correctional Peace Officers Association
Lawrence Martin
Columbia University
Deborah Root
Maxwell AFB, Alabama

Statements for the record

Linda Davis
AFGE Local 1745
Ron Prater
Authur Andersen, LLP
The Honorable Silvestre Reyes
U.S. House of Representatives, Texas
The Honorable Robert Underwood
U.S. House of Representatives, delegate from Guam
Gene Zaino
Contractors Resources, Inc.

Appendix J

Biographies of Panel Members

Panel Chairman

David M. Walker

Comptroller General of the United States

David M. Walker became the seventh Comptroller General of the United States and began his 15-year term when he took his oath of office on November 9, 1998. As Comptroller General, Mr. Walker is the nation's chief accountability officer and head of the U.S. General Accounting Office (GAO), a legislative branch agency founded in 1921. GAO's mission is to help maximize the performance and assure the accountability of the federal government for the benefit of the American people. Over the years, GAO has earned a reputation for professional objective, fact-based, and nonpartisan reviews of government operations.

Before his appointment as Comptroller General, Mr. Walker had extensive executive level experience in both government and private industry. Between 1989 and 1998, Mr. Walker worked at Arthur Andersen LLP, where he was a partner and global managing director of the human capital services practice based in Atlanta, Georgia. He was also a member of the board of Arthur Andersen Financial Advisors, a registered investment advisor. While a partner at Arthur Andersen, Mr. Walker served as a Public Trustee for Social Security and Medicare from 1990 to 1995. Before joining Arthur Andersen, Mr. Walker was Assistant Secretary of Labor for Pension and Welfare Benefit Programs from 1987 to 1989 and in 1985, was Acting Executive Director of the Pension Benefit Guaranty Corporation. His earlier technical, professional, and business experience was with Price Waterhouse, Coopers & Lybrand, and Source Services Corporation, an international human resources consulting and search firm.

Mr. Walker serves as Chair of the U.S. Intergovernmental Audit Forum, the U.S. Joint Financial Management Improvement Program, and the Center for Continuous Auditing. He is on the Board of the International Organization of Supreme Audit Institutions and various educational and not-for-profit entities. He is a Fellow of the National Academy of Public Administration and an active member of various professional, public service, and other organizations. Mr. Walker is also listed in Who's Who in the World and Who's Who in America.

Mr. Walker is a certified public accountant. He has a B.S. degree in accounting from Jacksonville University and a Senior Management in Government Certificate in public policy from the John F. Kennedy School of Government at Harvard University.

E. C. "Pete" Aldridge, Jr.

Under Secretary of Defense for Acquisition, Technology and Logistics

The Honorable E. C. "Pete" Aldridge, Jr. was confirmed as the Under Secretary of Defense for Acquisition, Technology and Logistics on May 8, 2001. In this position, he is responsible for all matters relating

to Department of Defense acquisition, research and development, logistics, advanced technology, international programs, environmental security, nuclear, chemical, and biological programs, and the industrial base.

Prior to his appointment by President George W. Bush, Mr. Aldridge was the chief executive officer of the LTV Aerospace Corporation. He came to that position from McDonnell Douglas Electronic Systems Company, where he served as president from 1988 to 1992. He was confirmed as the 16th secretary of the United States Air Force in June of 1986 and led the department until 1988. During the past 30 years, Mr. Aldridge has held several significant positions within the Department of Defense and private industry. These include advisor to the strategic arms limitation talks in Helsinki and Vienna, senior manager with the LTV Aerospace Corporation, senior management associate in the Office of Management and Budget, Deputy Assistant Secretary of Defense for Strategic Programs, vice president of National Policy and Strategic Systems Group for the Systems Planning Corporation, and under secretary of the United States Air Force. As under secretary of the Air Force, he provided overall direction, guidance, and supervision for the National Reconnaissance Office and the Air Force space program.

Mr. Aldridge's outstanding work has earned him numerous awards and honors, including the Secretary of Defense Meritorious Civilian Service Award, the Department of Defense Distinguished Civilian Service Award, and the Department of Defense Distinguished Public Service Award, among many others. In addition, he has held leadership roles in defense, industry, and aerospace related groups including former president and fellow, American Institute of Aeronautics and Astronautics (AIAA); chair, AIAA Foundation Board; member, Defense Science Board; national director and life member, Air Force Association; and member of the board of directors, Air Force Academy Foundation.

Mr. Aldridge received a bachelor's degree in aeronautical engineering from Texas Agricultural and Mechanical University in 1960 and a master of science degree, also in aeronautical engineering, from the Georgia Institute of Technology.

Frank A. Camm, Jr.
Senior Analyst, RAND Corporation

Dr. Camm leads multidisciplinary analytic teams at RAND that seek to improve services acquisition policy in the Department of Defense (DOD). This work occurs in three RAND-managed federally funded research and development centers (FFRDCs) that provide nonpartisan, objective policy analysis to various parts of DOD.

Dr. Camm has worked for RAND for most of the past 25 years. During that time, he has focused on analyses of policies and practices that define the relationship between large, technically sophisticated,

private companies and the government. These policies include pricing, regulation, tax and liability law, and government contracting relevant to the energy, chemical, automotive, aerospace, and electronics industries. His current work includes an assessment of the processes the Army uses to choose the contract-organic split for support of its deployed forces and an assessment of recent innovations in services acquisition in DOD as a whole.

Dr. Camm has served on many government committees. In 1986, for example, he was a member of the official U.S. delegation to the United Nations Environment Programme conference on stratospheric ozone depletion. As a member of the Air Force Scientific Advisory Board, he participated in the 1994 summer study of life extension and capability enhancement options for major Air Force weapon systems. During 1997-98, he chaired the Reparable Spares Management Board for the commander of the Air Force Materiel Command. Since then, he has served on a variety of high-level teams for the Office of the Secretary of Defense and Air Force related to sourcing, contracting, and logistics management.

Drawing on his on-going work at RAND, Dr. Camm has briefed the Defense Depot Maintenance Task Force (1994), the Commission on Roles and Missions of the Armed Forces (1995), the Defense Science Board Task Force on Outsourcing and Privatization (1996), and the Secretary and the Chief of Staff of the Air Force on a variety of resource management policy issues.
Dr. Camm has a B.A. from Princeton University and a Ph.D. from the University of Chicago, both in economics.

Mark C. Filteau

President, Johnson Controls World Services, Inc.

Mr. Filteau is president of Johnson Controls World Services, Inc., which has a highly diversified portfolio of contracts and joint ventures producing over $1.5 billion in annual revenue. Johnson Controls Integrated Facilities Management Division is one of the largest providers of facilities management and specialized technical services to commercial and government customers worldwide. Johnson Controls currently operates major facilities for the U.S. government, including the Department of Energy, NASA, the Navy, the Army, and the Air Force, as well as for the Canadian, British, and Malaysian governments, Microsoft, IBM, Sun, CSC, and Hoffman-LaRoche Pharmaceuticals.

Prior to joining Johnson Controls, Mr. Filteau was president of DynCorp Information & Engineering Technology, Inc. At DynCorp, he led the integration of eight acquired companies into one new business unit that is now one of the top information and communications technology service providers to the federal government. Mr. Filteau also served as president of PRC Public Sector, Inc., one of the leading providers of emergency dispatch and police records management systems,

and as senior vice president for information systems at BDM International, Inc. In addition, Mr. Filteau received several awards from his clients, including a Commander's Award for Excellence from the Air Force Logistics Command and a NASA Achievement Award for his work on the Hubble space telescope.

While pursuing doctoral studies in management science at Florida State University, where he received his master's degree in urban planning, Mr. Filteau taught courses and conducted research in facilities planning and regional economics. His work at Florida State earned him the American Institute of Planners Outstanding Achievement Award.

Before beginning his graduate studies, Mr. Filteau served as a VISTA volunteer. During this period, he managed a non-profit community service center, including a 24-hour crisis intervention center and community residences for developmentally disabled adults.

Stephen Goldsmith
Senior Vice President, Affiliated Computer Services

Stephen Goldsmith currently serves as senior vice president for strategic initiatives and e-government with Affiliated Computer Services. He is also faculty director for the Innovations in American Government program at Harvard's Kennedy School of Government, chairman of the Corporation for National Service, and special advisor to President Bush on faith-based and not-for-profit initiatives. Prior to these positions, Mr. Goldsmith served as chief domestic policy advisor to the George W. Bush presidential campaign.

While serving two terms as mayor of Indianapolis, America's 12th largest city, Mr. Goldsmith earned a national reputation for innovations in government. As mayor, he reduced government spending, cut the city's bureaucracy, held the line on taxes, eliminated counter-productive regulations, and identified more than $400 million in savings. He reinvested the savings by putting more police officers on the street and implementing a $1.3 billion infrastructure improvement program called Building Better Neighborhoods. Under his leadership, Indianapolis enjoyed record-breaking job creation and set a record pace for new construction.

Prior to his two terms as mayor, Mr. Goldsmith was the Marion County district attorney for 13 years. He is also a partner with Baker & Daniels, an Indiana-based law firm.

Bobby L. Harnage, Sr.
National President, American Federation of Government Employees, AFL–CIO

As national president of the American Federation of Government Employees (AFGE), AFL–CIO, Mr. Harnage leads the nation's largest union for government workers in some 1,100 locals in the United States and overseas.

Prior to becoming national president, Mr. Harnage served as AFGE national secretary-treasurer for 6

years, from 1991 to 1997. Under his leadership, the union greatly reduced delinquencies, created a streamlined electronic membership processing system, increased its investment opportunities, undertook a successful database cleanup effort, and overhauled the union's entire computer system. While secretary-treasurer, Mr. Harnage also played a key role as chair of the union's privatization committee—a watchdog for defense workers and the vital services they provide. Mr. Harnage held numerous leadership roles within AFGE, including 5th district national vice president and president of the Federation of National Representatives (FNR) negotiating team. As a member of FNR he helped negotiate two collective bargaining agreements. Before becoming an activist with the AFGE, Mr. Harnage had a distinguished military and civilian career with the Air Force. He served as an air police investigator in the Philippines, as well as a sheet metal helper, and with the security police at Warner Robins Air Force Base in Georgia.

Mr. Harnage was raised and educated in Moultrie, Georgia. He attended Norman Junior College prior to entering the Air Force. After his discharge from the military, he attended Macon College and the University of Georgia. He served as a member of the labor advisory board, Center for Labor Education and Research, at the University of Alabama and on the board of directors of the Atlanta Metropolitan Area Red Cross.

Mr. Harnage is an expert marksman who twice won the 8th Air Force Individual Championship for small arms. He also won the Georgia State Championship, was a team member of the Air Force Logistics Command Championship Team, and placed fourth in a worldwide military competition in 1962.

Kay Coles James
Director, U.S. Office of Personnel Management

On July 11, 2001, the United States Senate confirmed Kay Coles James as director of the U.S. Office of Personnel Management (OPM). Ms. James came to OPM from the Heritage Foundation, where she was a senior fellow and the director of The Citizenship Project. She led Heritage's efforts to restore a strong ethic of citizenship and civic responsibility and provided expert opinion to elected and appointed officials nationwide on issues affecting parents, their children, and society.

Prior to joining Heritage, Ms. James served as dean of the School of Government at Regent University and chair of the National Gambling Impact Study Commission. As secretary of health and human resources for former Virginia governor George Allen, she designed and implemented Virginia's landmark welfare reform initiative. Before serving in the Allen administration, James was senior vice president of the Family Research Council in Washington, D.C. Under former President George H. W. Bush, Ms. James was an Assistant Secretary for Health and Human Services. She

also served under President George H. W. Bush as associate director of the White House Office of National Drug Control Policy. She was appointed by President Reagan and reappointed by President George H. W. Bush as head of the National Commission on Children.

Ms. James has also served on the boards of both the Fairfax County and Virginia state boards of education, as well as the boards of the Coalition of Christian Colleges and Universities, the Fellowship of Christian Athletes, and Young Life. She has also served on the boards of Amerigroup, Inc., PhyCor, Inc., Focus on the Family, and the Center for Jewish and Christian Values.

A graduate of Hampton University in Hampton, Virginia, James is the author of three books and is a frequent commentator and lecturer on a variety of domestic policy issues. *Never Forget* is her 1993 autobiography. Her second book is *Transforming America: From the Inside Out (1995)*. Her third book, on the subject of marriage, was completed prior to her appointment and will be released in September 2002. She lives in Arlington, Virginia, with her husband, Charles. They have three children.

Colleen M. Kelley
National President, National Treasury Employees Union

National President Colleen M. Kelley is the leader of the National Treasury Employees Union (NTEU), the nation's largest independent federal sector union. As the union's top elected official, and as spokesperson for the union, Kelley represents NTEU in the media and testifies before Congress on issues of importance to NTEU members and federal employees.

Kelley serves on the Internal Revenue Service (IRS) Modernization Executive Steering Committee, with oversight of the IRS reorganization mandated by legislation. She serves on labor-management partnership councils for the U.S. Customs Service, the Federal Deposit Insurance Corporation (FDIC), the Department of Health and Human Services (HHS), and the IRS.

Kelley is a member of the Federal Salary Council, the Employee Thrift Advisory Council of the Federal Retirement Thrift Investment Board, and a member of the Federal Employee Education and Assistance Funds (FEEA) Board of Directors.

Kelley is a member of the Board of Governors of the Partnership For Public Service, committed to enhancing perceptions of public service and encouraging participation in public service, and a member of the Committee for Excellence in Customer Service, dedicated to improving how government does business.

A NTEU member since 1974, Kelley was an IRS Revenue Agent for 14 years. She served in various NTEU chapter leadership positions, including chief steward, vice president, and chapter president (1982-1987) of NTEU Chapter 34 in Pittsburgh, Pennsylvania.

In August 1999, delegates to NTEUs 47th national convention elected Kelley National President. She received 93 percent of the votes cast.

A Pittsburgh native, Kelley joined the IRS upon graduation from Drexel University, with a bachelor's degree in accounting. She also earned a master's degree from the University of Pittsburgh and is a certified public accountant (C.P.A.).

Sean O'Keefe

Administrator, National Aeronautics and Space Administration

Sean O'Keefe served as the Office of Management and Budget's (OMB) representative to the Commercial Activities Panel through December 2001. After he was sworn in as the National Aeronautics and Space Administration's (NASA) 10th administrator on December 21, 2001, he was replaced on the panel by Angela Styles. Mr. O'Keefe came to NASA from the Office of Management and Budget, where he had served as deputy director since March 2001. As the first deputy cabinet officer appointed in the Bush administration, Mr. O'Keefe oversaw the preparation, management, and administration of the federal budget and governmentwide management initiatives across the executive branch.

Before joining OMB, Mr. O'Keefe was the Louis A. Bantle Professor of Business and Government Policy at Syracuse University's Maxwell School of Citizenship and Public Affairs. He also served as the director of National Security Studies, a partnership of Syracuse University and Johns Hopkins University, for delivery of executive education programs for senior military and civilian Department of Defense managers. Appointed to these positions in 1996, he was previously professor of business administration and assistant to the senior vice president for research and dean of the graduate school at Pennsylvania State University. From 1989 until 1992, Mr. O'Keefe served as comptroller and chief financial officer of the Department of Defense. In July 1992, President George H. W. Bush appointed him Secretary of the Navy. Before joining the Pentagon management team, Mr. O'Keefe served on the United States Senate Committee on Appropriations staff for 8 years and was staff director of the Defense Appropriations Subcommittee. His public service began in 1978, when he was selected as a presidential management intern.

Mr. O'Keefe is a fellow of the National Academy of Public Administration and has served as chair of an academy panel on investigative practices. He was a visiting scholar at the Wolfson College of Cambridge University in the United Kingdom, a member of the Naval Postgraduate School's civil-military relations seminar team for emerging democracies, and has conducted seminars for the Strategic Studies Group at Oxford University. He served on the national security panel to devise the 1988 Republican platform and was a member of the 1985 Kennedy School of Government program for national security executives at Harvard University.

In December 2000, Mr. O'Keefe was the recipient of the Department of the Navy's Public Service Award. He was also the 1999 faculty recipient of the Syracuse University Chancellor's Award for Public Service. In 1993, President George H. W. Bush and Defense Secretary Cheney presented him with the Distinguished Public Service Award. He is the author of several journal articles; contributing author of *Keeping the Edge: Managing Defense for the Future,* released in October 2000; and, in 1998, co-author of *The Defense Industry in the Post-Cold War Era: Corporate Strategies and Public Policy Perspectives.* He is also a member of the Bohemian Club of San Francisco.

Mr. O'Keefe earned his B.A. in 1977 from Loyola University in New Orleans, Louisiana, and his M.P.A. in 1978 from Syracuse University's Maxwell School of Citizenship and Public Affairs.

The Honorable David Pryor
Director, Institute of Politics, Harvard University

David Pryor became the director of the Institute of Politics on August 1, 2000, after a long and distinguished career in public service. He served as a United States senator from Arkansas from 1979 until 1996. During that time, he was secretary of the Democratic Conference, third in the Senate Democratic leadership, and was a member of the Senate Democratic Steering Committee.

Mr. Pryor's first committee assignment in the U.S. Senate was the Committee on Agriculture, where he served as chairman of the Agriculture Subcommittee on Agricultural Production and Stabilization of Prices. He served on and chaired the Senate Special Committee on Aging, and chaired the 1995 White House Conference on Aging. Mr. Pryor also served on the Senate Finance Committee and the Senate Governmental Affairs Committee and chaired the Committee's Subcommittee on Federal Service, Civil Service, and Post Office.

In addition to his career in the U.S. Senate, Mr. Pryor was governor of Arkansas from 1974 to 1978. He was first elected to the Arkansas House of Representatives in 1960, where he served three terms. Since his retirement from the Senate, Mr. Pryor has been a Fulbright Distinguished Fellow of Law and Public Affairs at the University of Arkansas, Fayetteville, and a business consultant.

Mr. Pryor became a fellow at the Institute of Politics in the spring of 1999. He received his L.L.B. from the University of Arkansas School of Law in 1964 and his B.A. from the University of Arkansas at Fayetteville in 1957.

Stan Z. Soloway
President, Professional Services Council

Stan Z. Soloway is president of the Professional Services Council (PSC), the principal national trade association representing the professional

and technical services industry. PSC is known for its leadership in the full range of acquisition, outsourcing, and privatization issues. Mr. Soloway assumed the presidency of PSC in January 2001. PSC's member companies provide expertise in areas such as defense, space, environment, energy, education, health, and international development that is used to assist virtually every department and agency in the federal government. PSC's members also have extensive business relationships with state and local governments and commercial and international customers. All told, the professional and technical services sector performs more than $400 billion in service nationally, including more than $100 billion annually in support of the federal government.

Prior to joining PSC, Mr. Soloway served nearly 3 years as the deputy under secretary of defense (acquisition reform) and concurrently as director of the defense reform initiative. As deputy under secretary, he was the department's senior official responsible for the development and implementation of far-reaching reforms to DOD's acquisition processes and policies. As director of the defense reform initiative, Mr. Soloway led significant departmentwide reengineering and reform initiatives in areas as diverse as privatization and outsourcing, electronic commerce, financial management reform, logistics transformation, and quality of life for troops.

Before his appointment to DOD, Mr. Soloway was a public policy and public affairs consultant for nearly 20 years and a highly regarded expert in, and frequent lecturer on, acquisition, privatization, and outsourcing issues. He served on the policy committee of the Council of Defense and Space Industry Associations, was co-founder of the Acquisition Reform Working Group, chairman of the Industry Depot Coalition, and founding member of the Government Competition Coalition. Additionally, he has produced local, national, and international television projects and has consulted on more than a dozen campaigns for the U.S. Congress and Senate.

In recognition of his leadership at DOD, Mr. Soloway was awarded the Secretary of Defense Medal for Outstanding Public Service in April 2000; in December 2000, he was awarded the Secretary of Defense Medal for Exceptionally Distinguished Public Service, the highest civilian award of its kind.

Mr. Soloway earned a degree in political science from Denison University in Ohio, where he was elected to the national men's journalism, national men's leadership, and national political science honorary societies.

Angela Styles
Administrator, Office of Federal Procurement Policy

On April 23, 2001, President George W. Bush nominated Angela B. Styles as administrator for federal procurement policy in the Office of Management and Budget (OMB). The

United States Senate confirmed her nomination by unanimous vote on May 24, 2001. She replaced Sean O'Keefe on the Commercial Activities Panel in December 2001 after he was confirmed as the administrator of the National Aeronautics and Space Administration.

Prior to confirmation, Ms. Styles was counselor to the director of OMB. From January to April 2001, she was in a temporary appointment at the General Services Administration's Office of Government Wide Policy and Public Buildings Service. Before joining GSA, Ms. Styles was counsel for the Washington, D.C., law firm of Miller & Chevalier. Her legal practice concentrated in the area of federal procurement law and litigation, including cost and accounting issues, defective pricing, procurement fraud matters, contract disputes and claims, contract drafting and negotiations, and compliance matters.

Over the past several years, her practice increasingly focused on government contract disputes involving cost accounting standards compliance, cost allowability, and allocation. Ms. Styles has litigated contractors' claims against the U. S. government before the Armed Services Board of Contract Appeals, the United States Court of Federal Claims, and the United States Court of Appeals for the Federal Circuit. Before entering the practice of law, Ms. Styles worked in Washington, D.C., as a legislative aide for Congressman Joe Barton and former governor Will P. Clements in the Texas Office of State-Federal Relations.

Ms. Styles is an active member of the American Bar Association's Section of Public Contract Law, where she recently served as chair for the Legislative Coordinating Committee, and is a former vice chair of the Accounting, Cost and Pricing Committee. Ms. Styles has lectured on government contract cost and accounting issues and is the co-author of an article entitled "Confirming Environmental Cost Allowability Determinations to CERCLA's No-Fault Approach," 98-7 Government Contract Cost Pricing & Accounting Report at 3 (Fed. Pubs. July 1998).

Ms. Styles received a bachelor of arts degree, with distinction, from the University of Virginia. She graduated with honors from the University of Texas School of Law, where she was an articles editor for the *American Journal of Criminal Law* and was appointed to the Order of the Coif.

Robert M. Tobias
Distinguished Adjunct Professor, American University

Robert M. Tobias is currently teaching at American University as a distinguished adjunct professor. He is also the director of the newly created Institute for the Study of Public Policy Implementation, which brings together members of Congress, political appointees, career executives, union leaders, academics, and the consulting community to discuss and attempt to resolve public policy implementation issues.

Mr. Tobias is a member of the Internal Revenue Service Oversight Board, which has broad strategic and budget oversight responsibility for the Internal Revenue Service. He also serves on the Advisory Committee for Excellence in Government and the Federal Acquisition Institute Research Advisory Board. Mr. Tobias serves as president of the Federal Employees Education and Assistance Fund. Mr. Tobias is a frequent contributor to *Federal Times,* the *Government Employees Relations Report,* and *Government Executive Magazine* on current federal sector public policy implementation issues.

Prior to his work at American University, Mr. Tobias served for 31 years with the National Treasury Employees Union (NTEU), from 1983 to 1999 as its president. As NTEU's general counsel from 1970 to 1983, Mr. Tobias focused NTEU on creating employee rights through aggressive negotiation and litigation. Mr. Tobias also served on the government-wide labor management partnership council that was established to support and nurture collaborative labor management relationships throughout the federal government. In addition, he served on the Department of Health and Human Services, U.S. Customs Service, Federal Deposit and Insurance Corporation, and Internal Revenue Service labor management partnership councils.

Mr. Tobias received his bachelor's and master's degrees in business administration from the University of Michigan, and he graduated from the George Washington University Law School, where he served as a professor on the adjunct faculty for 22 years.

Appendix K

Acknowledgments

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